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# In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE UNITED STATES, PLAINTIFF IN ERROR,
*v.*
JIN FUEY MOY.
No. 525.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.*

## BRIEF FOR THE UNITED STATES.

### STATEMENT OF THE CASE.

This is a writ of error by the United States, under the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, from a decision of the district court quashing an indictment charging a conspiracy to violate section 8 of the so-called Harrison Drug Act of December 17, 1914, 38 Stat. 785, which decision was based on the construction of said section (R. 15). The section is as follows:

> SEC. 8. That it shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his

possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of section one of this Act: *Provided,* That this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this Act; or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this Act; or to common carriers engaged in transporting such drugs: *Provided further,* That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the defendant.

The indictment contained ten counts (R. 2–8), but the first alone need be considered. It charged (R. 2) that the defendant in error conspired with one Martin to commit an offense against the United

States, namely, to unlawfully have in the possession and under the control of Martin opium, Martin not then being registered or having paid the special tax required by the Harrison Act.

On a motion to quash, the court held this indictment defective for the following reason (R. 15):

> The unlawful act, therefore, charged against the defendant is not the improper or unlawful dispensing of a drug, whether in good or bad faith, but consists in having in the possession and under the control of Martin certain drugs. The indictment, therefore, can not be sustained unless the having in the possession and under the control of Martin of certain drugs is an unlawful thing and a violation of the act of Congress.
>
> In reading the eighth section in connection with the remaining sections of the act of Congress, when it provides that it shall be unlawful for any person not registered under the provisions of this act to have in his possession certain drugs, *I think that the word "person" should be held to refer to the persons with whom the act of Congress is dealing; that is, the persons who are required to register and pay the special tax in order to import, produce, manufacture, deal in, dispense, sell, or distribute. And there is no allegation in the indictment that Martin had in his possession these drugs for any of these purposes.*

> The indictment, therefore, could not be sustained, unless the mere fact of having the drug in his possession is a violation of the law. If so, any person would be presumptively guilty and subject to indictment and have the burden of proof cast upon him under this section, if he had any small amount of the prescribed drug in his possession, without any reference to the purpose for which it was to be used, whether legitimate or otherwise.
>
> *On account of the view which the court entertains as to the scope of the act of Congress,* the motion to quash the indictment is sustained, and a general exception is noted to the Government, and they will be given any special exceptions that may be desired. [Italics ours.]

Two other decisions have been made by District Courts giving the same construction to section 8, namely, *United States* v. *Woods,* 224 Fed. 278, and *United States* v. *Wilson,* 225 Fed. 82. In the *Woods* case Judge Bourquin said (p. 280):

> Having in mind that taxes can be imposed and statutory offenses created only by direct, clear, and apt language, it seems clear that there is nothing in the act imposing the duty of registration and payment of taxes upon mere consumers of the drugs. They are not within section 1, and section 8 does not purport to extend the registration and taxation features of the act to them, or to any one, but only to make unlawful mere possession of

the drugs by any person of the classes by section 1 required to register and pay, and who have not, and to create a statutory rule of evidence.

In the *Wilson* case Judge McCall said (p. 84):

> The question now arises, to whom does the clause " any person not registered under the provisions of this act and who has not paid the special tax " in the eighth section refer? Clearly, it refers to, and at least includes, those doing the things specifically named in the first section. Does it refer to and include others doing things not specifically named in the act, viz, those having in their possession or under their control the drugs named for their personal consumption? It seems to me that to so hold would be for the court to enlarge the list of those whom Congress required to register and pay the special tax. To that extent it would be an amendment of the act. This is not the function of the court. If Congress had intended to require persons to register who had in their possession or under their control drugs for any purpose other than that stated in the act, it would seem that it would have been a simple matter to have said so. It is clear to my mind that the language quoted from the eighth section, supra, when read in connection with the first section of the act, refers only to those mentioned in the last-named section, and however desirable it may be to have that list enlarged, the court is without authority to do it.

The above three quotations give the only reasons which have been brought to our attention for the construction given section 8 in the case at bar.

On the other hand the contrary ruling has been made by Judge Neterer in *United States* v. *Brown,* 224 Fed. 135, and by Judge Landis in his charge to the jury in the case of *United States* v. *Arthur L. Blunt,* recently heard in the Northern District of Illinois, and not reported.

In order to present the matter most conveniently to this court, we print as Appendices to this brief the Act itself, and the regulations approved by the Secretary of the Treasury under the authority of the last paragraph of section 1 of the Act.

## ARGUMENT.

### I.

#### CONSTRUCTION OF THE ACT.

In order to reach a just conclusion as to the proper meaning of section 8 it is necessary to analyze the preceding portions of the Act so as to understand how the matter stood when Congress enacted this section.

Section 1 of the Act deals with the persons who are *required* to register with the Collector of Internal Revenue, and to pay a special tax at the rate of $1 per annum. These persons are all those who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away certain

drugs. Every such person must register his name or style, his place of business, and the place where such business is to be carried on. *From this requirement of registration and tax payment are specifically exempted mere employees of persons who themselves fall within the class of producers, dispensers, etc., and certain public officials.*

Having thus established a class which must register and pay the tax, section 2 of the Act treats of the way in which this class may deal in the drugs. This can only be by written orders, given by the person getting the drug to the person furnishing it, on printed forms supplied by the Commissioner of Internal Revenue. These orders must be preserved for inspection, *and can only be furnished to persons who have registered and paid the tax* (par. of sec. 2 under (d)), *and when so furnished can only be used "in the conduct of a lawful business in said drugs or in the legitimate practice of his profession"* (end of same par.).

Reading these provisions together, as they should be read, it follows that the persons who are required to register and pay the tax are the persons who deal in the drugs by means of order forms, and that they must be persons dealing in the drugs in the course of a lawful business or in the legitimate practice of a profession. In other words, no one *can* register and pay the tax under the provisions of section 1 of the Act, except such persons as are regularly dealing in the drugs in a legitimate way.

From the requirement as to order forms, however, there are exempted (*a*) the dispensing of drugs by a physician, etc., in the course of his professional practice; (here, however, a record must be kept except in the case of personal attendance); (*b*) the dispensing by a dealer, *e. g.,* a druggist, to a consumer on a prescription, but the prescription must be formally executed and preserved; (*c*) the sale, etc., of the drugs in foreign commerce in accordance with regulations prescribed by the importing country; (*d*) the sale, etc., of the drugs to certain public officials.

Section 3 of the Act then requires of this class of registered persons sworn statements covering the amount of drugs received and further information of that character.

Section 4 prohibits (*in the same language as section 8*) the transportation in interstate commerce of the drugs by "any person who shall not have registered and paid the special tax," but exempts from its prohibition (*a*) common carriers, (*b*) employees of registered persons, (*c*) persons delivering the drugs under (1) dispensation, or (2) prescription of a physician, etc., (*d*) certain public officials.

Section 5 relates to publicity, and is immaterial here.

Section 6 exempts from all the provisions of the Act preparations and remedies containing a small and supposedly innocuous amount of the drugs,

provided the preparations are sold, etc., *or possessed* as medicines and not for the purpose of evading the provisions of the Act.

Section 7 merely extends the general revenue laws to the Harrison Act and is immaterial here.

We may now be able to understand the scheme of legislation disclosed by the first seven sections of the act, namely, a class of persons who are engaged in a business the conduct of which includes legitimately the use, dispensing, etc., of the drugs; who must register and pay the tax; who can only deal in the drugs on order forms; who must make reports; who alone can deal in interstate commerce in the drugs; and who can only deal in the supposedly innocuous preparations as medicines. To enforce the requirements thus placed upon this case, section 1 explicitly makes it unlawful for any person, required to register, to produce, etc., the drugs without having registered and paid the tax. Section 2 explicitly makes it unlawful for this same class to deal in the drugs except through order forms, and explicitly makes it unlawful to deal in them even in this way except in the conduct of a lawful business in the drugs or in the legitimate practice of a profession. Section 4 explicitly makes it unlawful for anyone but this class to deal in interstate commerce in the drugs. From the requirements as to *registration,* employees and public officers are exempted; from the requirement of *order forms* public officers, and physicians, etc., dispensing to or pre-

scribing for patients; from the requirements as to *interstate commerce,* carriers, employees, persons delivering prescriptions, and public officers.

It seems clear, therefore, that before section 8 is reached, the registered class (including the exemptions from that class), and the manner in which it shall deal in the drugs (including how it shall have possession of them), as well as the matter of interstate commerce in the drugs, have been fully dealt with and illegal action in that regard appropriately denounced. In other words, the matter of producing, transporting, or dealing in the drugs as a business has been fully dealt with and regulated, by registration, by penal provisions, and by public records, before section 8 is reached.

We come then to section 8. Like section 4 it starts out with a general declaration that it shall be unlawful *"for any person"* not registered and tax paid to have the drugs in his possession. Fairly looked at, this would seem to be merely the final step in safeguarding the use of these drugs to which the other sections have led up, for which they have furnished a firm basis. Having strictly regulated and safeguarded the dealing in the drugs by authorized persons, their use in interstate commerce, and even the possession of them in small quantities, the final, almost inevitable, step is to regulate strictly their possession by unauthorized persons, and where interstate commerce cuts no figure. This section 8 does, apparently with perfect clearness, both by the

implied exemption of the main enactment and by the express exemptions of the proviso. Registered persons by implication may have the drugs in their possession; employees, persons having them under a prescription, public officers, warehousemen and carriers by express exemption. As to every other person except these specified classes the Act, in as clear language as possible, declares the possession of the drugs unlawful. Persons who can not bring themselves within the scheme (set up and protected by the prior sections) of registration, order forms, prescriptions formally made, and regular dealings in interstate commerce, persons who are outside of this record of the production, transportation, and use of the drugs are not permitted to have possession of them at all.

What then, are the reasons against adopting this fair, almost inevitable, construction of section 8?

A reading of the opinion of the District Court in the case at bar, and of the courts in the *Wilson* and *Woods* cases, *supra,* discloses, so far as we can see, only two;

(1) The Act deals only with those persons who are required to register and to pay the tax; therefore section 8 applies only to such persons.

This, it is submitted, involves both begging the question, and a *non sequitur*. *Section 4* of the Act, as we have already pointed out, makes it unlawful for any person not registered and tax paid to deal in interstate commerce in the drugs. Therefore a

section prior to section 8 dealt with other persons than those who could register, unless the same construction applied to section 8 is to be applied to section 4; but to assume this is to beg the question. Again, section 6 provides that the Act shall not apply *de minimis,* provided the preparations *are possessed* as medicines. Here is a general provision as to possession which hits everyone, unless it is restricted to possession by those person who are required to register; but this again would be begging the question.

The reasoning of the court is also a *non sequitur.* Admitting that the prior sections dealt only with those persons who are required to register, it would not follow that the 8th section did not go further, and it is believed that we have shown above that the prior sections were but preparations for the advanced step taken in section 8.

(2) The second reason given for the limited construction is that persons who are required to register are admittedly within the provisions of section 8. To include others doing things not specifically named in the Act would be to amend the Act by including persons not mentioned. (Judge McCall in 225 Fed., at p. 84; Judge Bourquin's reasoning in 224 Fed., at p. 280, appears to be a mere *ipse dixit.*)

It is true that persons required to register are, if they do not register, within the provisions of section 8. This of course is an additional penalty upon them, but it is not clear why the mere fact of *their*

*inclusion* should require the inference that *all others are excluded.* Without using cumbersome language and circumlocution, it is hard to see how the class which Congress intended to affect, namely, those who had no legitimate occasion for the possession of the drugs, could be covered without including those who must register but did not; and, as a matter of practical administration, since the failure to register, being a " requirement " of the Act, is punished by section 9, it is not probable that section 8 would be necessary to deal with this class.

One thing appears to be clear, namely, that the plain language of section 8 does not justify the limitation placed on it by the District Court. That section establishes a class, *i. e.,* those " not registered under the provisions of this Act," and those who have " not paid the special tax provided for by this Act." This is as distinct a species as all red-headed men. It then provides that every person, in that class, shall be liable under certain circumstances. To give the language the restricted meaning claimed for it, we must read, after the words quoted above, " and who is *required* to register and to pay the special tax." What authority has a court thus to insert words into an Act of Congress, changing its entire scope?

When, now, the proviso to section 8 is taken up, the difficulty of the construction adopted by the court below becomes increasingly evident. If the main enactment deals only with persons required to register, the exemptions in the proviso must

equally deal with this limited class and with it only.

The first exemption is of employees of registered persons. (Nurses are apparently in this class, as the Act is worded.) These, therefore, must be persons required to register. But section 1 of the Act expressly provides that no employee shall be required to register. Therefore the construction of the court below of the proviso to section 8 directly contradicts the proviso to section 1.

The second exemption is of persons having possession of the drugs on a prescription. According to the decision of the court below, such persons are required to register. But it is only necessary to read paragraphs (*a*) and (*b*) of section 2 to see that such persons can not register. There is a clear distinction there drawn between registered persons, and " patients " and " consumers ".

The third exemption is of public officials, and they, too, according to the construction of the court below, are required to be registered. But section 1 exempts them from registration, and another clear conflict between construction and express provision appears.

The fourth exemption is of warehousemen and common carriers. But these persons could not register because they transport and do not produce, etc., and their cases are dealt with in the transportation provisions of the Act, namely, paragraph (*c*) of section 2, and section 4.

To put the matter a little differently, the proviso to section 8 deals entirely with persons who *could not* register nor pay the tax. If this class was not included in and therefore already exempted from the main enactment of section 8, the whole proviso is mere surplusage.

In addition, as has been pointed out, the language of section 4 is the same as that of section 8, and must receive the same construction. Thus confining section 4, it follows that every person not required to register may freely ship these drugs in interstate commerce, a conclusion, we believe, plainly contrary to the language of the section and to any possible intent of Congress.

Section 6 plainly implies that the mere " possession " by any one of the preparations there referred to is not authorized except for medicinal purposes. This language must also be restricted to those who are required to register, or else there is greater scope given to possession of the drugs in large quantities than there is in small.

The construction given the Act by the court below does not merely weaken greatly the beneficial operation of the statute. It leaves the matter in a worse plight than before the Act was passed. If persons who are not conducting a lawful business in the drugs and can not therefore register are permitted to have lawful possession of the drugs, the traffic in them will inevitably be diverted from

reputable physicians and druggists to the infamous class of persons who for gain are willing to pander to one of the most lamentable and miserable weaknesses of human nature. Such an intent on the part of Congress should not be presumed. The statute should be given a construction in accordance with its plain language and so as to carry out beneficially its clear intent.

The case at bar, in the aspect of the construction of a statute, is precisely similar to the case of *United States* v. *Portale,* 235 U. S. 27. In that case the Act of June 25, 1910, required " every person " harboring an alien woman for certain purposes, and under certain circumstances, to file a statement giving certain facts in regard to her. The court below construed the language " every person " as limited to " persons who have had to do, directly or indirectly, with the bringing in or sending forth of such women or girls." This court pointed out that the statute required " every person " harboring a woman as above to file a statement, and said as to the construction placed upon the statute by the lower court:

> We see no sufficient reason for the limitation thus read into the generality and literal meaning of the words of the Act.

See also *United States* v. *Barnow,* decided by this court on November 8 last.

It is true that the statute in this case, as in the Portale case, is a penal statute. But the rule as to strict construction of such statutes " merely gives

a turn to the judicial mind, and furnishes no clear rule where it shall go." Much less does it justify a disregard of the plain language of a penal Act, and an insertion therein of language materially altering its meaning and limiting its scope.

The Harrison Act is a part of a comprehensive scheme of legislation regulating the traffic in and use of opium and its derivatives, and to a certain extent cocaine and its derivatives. The Act of January 17, 1914, ch. 9, 38 Stat. 275, amending the Act of February 9, 1909, 35 Stat. 614, prohibited the importation and use of opium for other than medicinal purposes, and provided that the opium or derivative thereof imported contrary to its provisions should be forfeited and destroyed. It also prohibited the exportation of opium or cocaine from the United States, or from any country under its control. The Act of January 17, 1914, ch. 10, 38 Stat. 277, levied a prohibitory tax upon the manufacture in this country of opium for smoking purposes. The Act of March 3, 1915, 38 Stat. 817, regulated the traffic in and use of opium and cocaine in the consular districts of the United States in China.

The first-named Act, that of January 17, 1914, chapter 9, made opium an "outlaw of commerce," 224 Fed. 137. It ordered its destruction when not imported for medicinal purposes. The other Acts have evidently the same intent. It is incredible therefore that Congress, in passing the Harrison Act, which is strictly in *pari materia* with the other legislation, should have intended, by section 8, to

allow opium to be in the lawful possession of any person who was not required to register and to pay the tax; that is, practically in the possession of anyone. Such a construction would give opium and its derivatives a lawful standing in this country which would be entirely contrary to the general purpose of Congress as indicated in the other Acts referred to above.

## II.

### CONSTITUTIONALITY OF THE ACT.

By an amended motion to quash the defendant in error sought to raise the question of the constitutionality of the Act (R. 10, 11). In regard to this the court said (R. 13):

> This is a revenue Act. And unless it is such, save as to those provisions which relate to the transportation of drugs in interstate commerce, it would perhaps violate the provisions of the Constitution of the United States.

The decision itself, however, goes only on the construction, not at all on the invalidity, of the Act. Therefore, according to the established rule of this court the question of construction is the only one open on this writ of error. *United States* v. *Keitel*, 211 U. S. 370; *United States* v. *Mescall*, 215 U. S. 31; *United States* v. *Barber*, 219 U. S. 72. In *United States* v. *Portale*, *supra*, the Government, after referring to the above rule, nevertheless, out of abundance of caution, argued under pro-

test the constitutionality of the Act. This court, however, distinctly refused to consider the point, 235 U. S. 31, and that ruling is decisive here.

When the question is properly raised, it will be time to consider whether the Act is not constitutional as an exercise of the taxing power, as auxiliary to the right to regulate imports into this country from foreign countries, and as passed in fulfillment of the obligations assumed by the United States under the Convention between the United States and other Powers on the Suppression of the Abuse of Opium and Other Drugs.

CONCLUSION.

The judgment of the court below should be reversed.

WILLIAM WALLACE, Jr.,
*Assistant Attorney General.*

W. C. HERRON,
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NOVEMBER, 1915.

## APPENDIX A.

[PUBLIC—No. 223—63D CONGRESS.]

[H. R. 6282.]

An Act To provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That on and after the first day of March, nineteen hundred and fifteen, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on: *Provided*, That the office, or if none, then the residence of any person shall be considered for the purposes of this Act to be his place of business. At the time of such registry and on or before the first day of July, annually thereafter, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs shall pay to the said collector a special tax at the rate of $1 per annum: *Provided*, That no employee of any person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs, acting within the scope of his employment, shall be required to register or to pay the special tax provided by this section: *Provided further*, That the person who employs him shall

have registered and paid the special tax as required by this section: *Provided further*, That officers of the United States Government who are lawfully engaged in making purchases of the above-named drugs for the various departments of the Army and Navy, the Public Health Service, and for Government hospitals and prisons, and officers of any State government, or of any county or municipality therein, who are lawfully engaged in making purchases of the above-named drugs for State, county, or municipal hospitals or prisons, and officials of any Territory or insular possession or the District of Columbia or of the United States who are lawfully engaged in making purchases of the above-named drugs for hospitals or prisons therein shall not be required to register and pay the special tax as herein required.

It shall be unlawful for any person required to register under the terms of this Act to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section.

That the word "person" as used in this Act shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person; and all provisions of existing law relating to special taxes, so far as applicable, including the provisions of section thirty-two hundred and forty of the Revised Statutes of the United States are hereby extended to the special tax herein imposed.

That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying the provisions of this Act into effect.

SEC. 2. That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or

employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section five of this Act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply—

(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: *Provided*, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: *Provided, however*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: *And provided further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

(c) To the sale, exportation, shipment, or delivery of any of the aforesaid drugs by any person within the United States or any Territory or the District of Columbia or any

of the insular possessions of the United States to any person in any foreign country, regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(d) To the sale, barter, exchange, or giving away of any of the aforesaid drugs to any officer of the United States Government or of any State, territorial, district, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, territorial district, county, or municipal or insular hospitals or prisons.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to collectors of internal revenue for sale by them to those persons who shall have registered and paid the special tax as required by section one of this Act in their districts, respectively; and no collector shall sell any of such forms to any persons other than a person who has registered and paid the special tax as required by section one of this Act in his district. The price at which such forms shall be sold by said collectors shall be fixed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, but shall not exceed the sum of $1 per hundred. Every collector shall keep an account of the number of such forms sold by him, the names of the purchasers, and the number of such forms sold to each of such purchasers. Whenever any collector shall sell any of such forms, he shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring any of the aforesaid drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of any of the aforesaid drugs. It shall be unlawful for any person to obtain by means of said order forms any of the aforesaid drugs for any purpose other

than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

The provisions of this Act shall apply to the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, and the Canal Zone. In Porto Rico and the Philippine Islands the administration of this Act, the collection of the said special tax, and the issuance of the order forms specified in section two shall be performed by the appropriate internal-revenue officers of those governments, and all revenues collected hereunder in Porto Rico and the Philippine Islands shall accrue intact to the general governments thereof, respectively. The courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said islands. The President is authorized and directed to issue such Executive orders as will carry into effect in the Canal Zone the intent and purpose of this Act by providing for the registration and the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, sell, distribute, or give away opium or coco leaves, their salts, derivatives, or preparations.

SEC. 3. That any person who shall be registered in any internal-revenue district under the provisions of section one of this Act shall, whenever required so to do by the collector of the district, render to the said collector a true and correct statement or return, verified by affidavit, setting forth the quantity of the aforesaid drugs received by him in said internal-revenue district during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine; the names of the persons from whom the said drugs were received; the quantity in each instance received from each of such persons, and the date when received.

SEC. 4. That it shall be unlawful for any person who shall not have registered and paid the special tax as required by section one of this Act to send, ship, carry, or deliver any of the aforesaid drugs from any State or Territory or the District of Columbia, or any insular possession of the United

States, to any person in any other State or Territory or the District of Columbia or any insular possession of the United States: *Provided*, That nothing contained in this section shall apply to common carriers engaged in transporting the aforesaid drugs, or to any employee acting within the scope of his employment, of any person who shall have registered and paid the special tax as required by section one of this Act, or to any person who shall deliver any such drug which has been prescribed or dispensed by a physician, dentist, or veterinarian required to register under the terms of this Act, who has been employed to prescribe for the particular patient receiving such drug, or to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties.

SEC. 5. That the duplicate-order forms and the prescriptions required to be preserved under the provisions of section two of this Act, and the statements or returns filed in the office of the collector of the district, under the provisions of section three of this Act, shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose; and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs. Each collector of internal revenue is hereby authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States, as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of $1 for each one hundred words or fraction thereof in the copy or copies so requested. Any person who shall disclose the information contained in the said statements or returns or in the said duplicate-order forms, except as herein expressly provided, and except for the purpose of enforcing the provisions of this Act, or for the purpose of enforcing any law

of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs, shall, on conviction, be fined or imprisoned as provided by section nine of this Act. And collectors of internal revenue are hereby authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in their respective collection districts as special-tax payers under the provisions of this Act, upon payment of a fee of $1 for each one hundred names or fraction thereof in the copy so requested.

SEC. 6. That the provisions of this Act shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them: *Provided*, That such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act. The provisions of this Act shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine.

SEC. 7. That all laws relating to the assessment, collection, remission, and refund of internal-revenue taxes, including section thirty-two hundred and twenty-nine of the Revised Statutes of the United States, so far as applicable to and not inconsistent with the provisions of this Act, are hereby extended and made applicable to the special taxes imposed by this Act.

SEC. 8. That it shall be unlawful for any person not registered under the provisions of this Act, and who has not paid

the special tax provided for by this Act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the prevision of section one of this Act: *Provided*, That this section shall not aply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this Act; or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this Act; or to common carriers engaged in transporting such drugs: *Provided further*, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the defendant.

SEC. 9. That any person who violates or fails to comply with any of the requirements of this Act shall, on conviction, be fined not more than $2,000 or be imprisoned not more than five years, or both, in the discretion of the court.

SEC. 10. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint such agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia as may be necessary to enforce the provisions of this Act.

SEC. 11. That the sum of $150,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying into effect the provisions of this Act.

SEC. 12. That nothing contained in this Act shall be construed to impair, alter, amend, or repeal any of the pro-

visions of the Act of Congress approved June thirtieth, nineteen hundred and six, entitled "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," and any amendment thereof, or of the Act approved February ninth, nineteen hundred and nine, entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes," and any amendment thereof.

Approved, December 17, 1914.

## APPENDIX B.

## REGULATIONS.

Under the authority conferred by section 1 of the above-quoted act, the following regulations are issued:

### Registry and Payment of Special Tax.

ARTICLE 1. As required by section 1 of said act, every person, partnership, association, company, or corporation therein described, and not specifically exempt, must, on or before the *first day of March, 1915*, register with the collector of the district, and must at the time of such registry, and on or before the first day of July in each year thereafter, pay to such collector a special tax at the rate of $1 per annum.[1]

If the applicant (other than a physician, dentist, or veterinarian) has more than one place of business, or if, in any case, the applicant is engaged in more than one profession or business where any of the drugs above described are made, stored, or dispensed, a separate application for registry must be made, and a special tax must be paid, in each such case.

ART. 2. Application for registry, and for the necessary special tax stamps will be in the following form,[2] blanks of which form should be obtained from the collector of the district.[3]

---

[1] The special tax imposed for the period Mar. 1, 1915 to June 30, 1915 (the close of the special tax year), will be 34 cents. Remittances for special taxes should be made in currency, money order, or certified check on a National or State bank.

[2] For convenience, and to conform to other requirements of law relating to special taxes, made applicable by this act, the application for registry and special tax stamps is here combined.

[3] For list of collection districts, and address of collectors, see Appendix, pp. 17–26.

FORM 678.—OPIUM, ETC.

APPLICATION FOR REGISTRY, AND FOR SPECIAL TAX STAMP.

(Act of Congress approved Dec. 17, 1914.)

LOCATION.

Registry No._____ | State of_____
Name or style of applicant_____ | County of_____
_____ | Town or city of_____
_____ | Street and No._____

To COLLECTOR OF INTERNAL REVENUE,
____ District of _____

SIR: The undersigned, under the above name or style, and at the place above designated, is now engaged, or intends to engage in the[1] _____

Pursuant to an act of Congress, approved December 17, 1914, application is hereby made for registration under said act, and for a special tax stamp for the special tax year ending June 30, 191__.

_____

By_____
(In case of a firm, or corporation, to be signed by the principal member or officer.)

Subscribed and sworn to before me this _____ day of _____ 191__

[SEAL.]_____

ART. 3. Applications in the form above prescribed when received by collectors, will be given a registry number, commencing with No. 1 in each district for the first application, and continuing in serial order as subsequent applications are filed. The registry number thus given each original application will be a permanent registry number for all renewal applications, and will be entered on all blank orders (art. 8) issued to the applicant.

All applications for registry will, on payment of the special tax imposed, be recorded alphabetically by classes in special record 10A., to be provided for that purpose.

---

[1] Here state business, or occupation or profession, as the "practice of medicine," or the "practice of dentistry," or "practice of veterinary medicine and surgery," or the "importation and sale of drugs coming under the operation of the act," or the "manufacture and sale of drugs coming under the operation of the act," or the "sale and distribution at retail of drugs coming under the operation of the act." If intended for analytical laboratory or hospital, so state.

### Special Tax Stamps.

ART. 4. Appropriate coupon stamps, denoting payment of the special tax under the act named, will be furnished collectors on requisition, and will be charged to them and accounted for as in the case of other special tax stamps.

### Sale and Disposal of Drugs.

ART. 5. Where any of the drugs referred to in section 1 of the act are to be sold or otherwise disposed of, the purchaser or receiver (unless specifically exempt under section 2 of the act) will, prior to such purchase or receipt, issue his order therefor and in the form prescribed in article 8 of these regulations.

ART. 6. Blanks of such order forms will be printed on distinctive paper and will be issued in tablets or books of 10 blanks each, and a charge for such blanks (including original and duplicate) will be made at the rate of $1 per hundred, as authorized by section 2 of the act, and will be so accounted for by collectors to whom the same are furnished.

Such blank orders must in all cases be procured from the collector of the district by persons using the same, but no requisition therefor will be accepted by collectors unless made by persons who have duly registered (art. 2) and who have paid the special tax as required by law; and, in such cases, only where the collector is satisfied that such blanks will be used for no unlawful purpose.

In addition to the special record 10A., provided for in article 3, collectors will keep a record or account of the number of such order forms sold by them, the name of each purchaser, and the number sold to each, as required by section 2 of said act.

ART. 7. Requisitions for such blanks will be in the following form; and, in filling such requisitions, the collector will cause the registry number and name of the applicant to be stamped on each blank issued by him. Adjustable name and numbering stamps will be supplied collectors for this purpose.

FORM 679.—OPIUM, ETC.

Registry No. ------[1]

REQUISITION FOR BLANK ORDERS.

(Act of Congress, approved Dec. 17, 1914.)

TO COLLECTOR OF INTERNAL REVENUE, ----------,
------District of----------. ---------- 191–.

SIR: Requisition is hereby made for[2] ------ blank order-forms, to be used solely in connection with the business, or for the purpose, set forth in my (or our) application for registry, filed in your office pursuant to an act of Congress, approved December 17, 1914.

---

---

(In case of a firm or company, to be also signed by a member, or principal officer.)

ART. 8. Upon receipt of such requisitions by collectors the same will be compared with the applications for registry, if filed, before the blank orders called for are issued.

Such blank orders will be in the following form:

--------District of----------
Registry No----------
----------(3)

ORDER FOR OPIUM, ETC.

(Act of Congress, approved Dec. 17, 1914.)

To----------,
----------.

Please ship goods by ----------, as follows:

| Specific description of articles.[1] | Quantity. | (2) |
|---|---|---|
| | | |
| | | |

---

---

---[3]

[1] Here give trade name of drugs.
[2] This space to be reserved for use of the person filling the order, for any purpose desired by him.
[3] Here give full name, business or profession, with full address.

ART. 9. The above order must be prepared in duplicate, the duplicate of which will be retained by the maker. If

[1] The registry number must in all cases be filled in by the applicant.
[2] The number to be here stated will be 10 or a multiple of 10.
[3] To be filled in by collector.

accepted, the law requires all such orders (both original and duplicate) to be retained on file for a period of two years, and in such a way as to be readily accessible to the inspecting officers. Persons *accepting* such orders, therefore, will file the same in their numerical order, i. e., *according to their registry numbers as to each collection district.*

**Dispensing of Drugs by Physicians, Dentists, or Veterinary Surgeons.**

ART. 10. Under the exempting provisions of section 2 of the act, no *written order* is required for the "dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon, registered under this act, in the course of his professional practice only." A record, however, is required to be kept of all such drugs so dispensed or distributed (except such as may be dispensed or distributed to a patient, upon whom such physician, dentist, or veterinary surgeon shall personally attend—i. e., *personally visit*) and must show:

1. The date when any such drug is dispensed or distributed:

2. The kind and quantity dispensed or distributed in each case; and

3. The name and residence of the patient to whom such drug was dispensed or distributed. [For form of prescriptions, see Art. 12.]

The record so kept must be preserved for a period of two years from the date of dispensing or distributing, and will be subject to inspection as provided in section 5 of the act. Each physician, dentist, and veterinary surgeon must supply himself with a suitable blank book for such record.

**Drugs Dispensed Under Prescription.**

ART. 11. A like exemption to that above noted is made as to drugs dispensed or distributed under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon, duly registered under this act. But all such prescriptions covering such drugs, not specifically exempt by section 6 of the act, must be dated and signed as of the day when issued; must be preserved for a period of two

years from the time when filled, and must be readily accessible to the inspection officers above referred to.

A separate file of all such prescriptions should therefore be kept by each druggist or apothecary filling the same, but such prescriptions may be numbered consecutively with other prescriptions received. Unless so filed a record must be kept showing:

1. The file number given to each prescription filled;

2. The name of the physician or surgeon signing the same; and

3. The name of the person for whom such prescription is filled.

Druggists must furnish their own record books for this purpose.

ART. 12. Under the authority conferred by section 1 of the act named, for the issuing of regulations necessary for carrying the provisions of the act into effect, physicians and surgeons writing any such prescriptions are hereby required to sign their name in full to the same, *to state therein their registry number* and the location of their office, and the name and address of the person for whom such prescriptions are written. Druggists and apothecaries must refuse to fill any such prescription unless signed as herein required; nor must prescriptions for such drugs be filled by any druggist or apothecary, if he has reason to suspect that it was fraudulently issued or obtained.

The dispensing of such drugs by druggists or apothecaries, except on physician's *original* prescriptions, or on original orders issued to persons who have duly registered, will be in violation of the act. Refilling of prescriptions or orders is therefore prohibited.

**Inventories.**

ART. 13. Every person, firm, or company dispensing directly to consumers any of the drugs herein referred to will, on the 1st day of March, 1915, prepare and keep on file an inventory of all such drugs (other than preparations or remedies specially exempt under the provisions of section 6 of the act) on hand at that date. No special form of inventory is here required, but the inventory made must fully

and clearly set forth the quantity of each kind of such drugs, preparations or remedies so held, and must be verified by oath not later than the 5th day of March, 1915.

**Sworn Statements.**

ART. 14. Section 3 of the act provides:

That any person who shall register in any internal-revenue district under the provisions of section 1 of this act shall, whenever required to do so by the collector of the district, render to the said collector a true and correct statement or return, verified by affidavit, setting forth the quantity of the aforesaid drugs received by him in said internal-revenue district during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine * * *.

Under the authority thus granted collectors will require such sworn statements in all cases where, from the number of order blanks obtained by any person, or from the character of the business carried on, he has reason to suspect that any of the drugs referred to are being procured, compounded, or disposed of by such person for illegal purposes, and in such other cases as he may think it advisable.

ART. 15. The request for such statement and the statements to be furnished in such cases will be made on the following form:

FORM 680.—OPIUM, ETC.

REQUEST FOR STATEMENT AS TO RECEIPT, ETC., OF CERTAIN DRUGS SPECIFIED IN ACT OF CONGRESS APPROVED DECEMBER 17, 1914.

OFFICE OF COLLECTOR,
------ DISTRICT OF ------,
----------,
----------, 191..

To ----------,
----------,
----------.

Pursuant to the provisions of section 3 of an act of Congress relating to the purchase, sale, or disposal of certain drugs, approved December 17, 1914, you are hereby requested to furnish me on or before the ---- day of --------, 191.., with a true and correct statement, verified by affidavit, of the quantity of each and all such drugs received by you in this district since ---------- 191.., giving the names of the persons from whom the said drugs were received, the

quantity in each instance received from each such person, and the date when received.

The statement here called for will be prepared and submitted on the return form hereto annexed.

_____,
*Collector.*

*Statement showing the quantity of certain drugs received by_____, in the _____ district of _____.*

_____, being first duly sworn, states that the following is a full and true statement of the quantity and the kind of drugs, described in the act of Congress approved December 17, 1914, received by him (or his firm or company) in the _____ district of_____, from _____, 191_, to _____, 191_:

| Date of receipt. | From whom received. | Address. | Particular description of drug. | Quantity received. |
|---|---|---|---|---|
| ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... |

_____[1]

_____

Subscribed and sworn to before me this ____ day of _____, 191_.

_____ [SEAL.]

## DUTIES OF OFFICERS.

ART. 16. It will be the duty of agents and other inspecting officers appointed under the provisions of section 10 of the act named to visit at irregular intervals the premises of all persons, firms, or companies registering under said act, or where they have reason to believe drugs of the character defined in the act are stored, and to see that all requirements of the act and these regulations are strictly complied with. They will, under the authority conferred by sections 2 and 5 of the act, inspect and, when necessary, verify such records, orders, prescriptions, statements, or returns made or received, and at once report for prosecution any violations of the law discovered by them.

Where suspected drugs are found on the premises of manufacturers or dealers who have not registered, samples of the

[1] In case of a firm or corporation, the foregoing statement must be made by a member or officer, who should sign as such.

same should be procured and forwarded to the laboratory in the office of the Commissioner of Internal Revenue for analysis.

ART. 17. Investigations here ordered made in a perfunctory manner will in no instance be tolerated, and any officer or employee who is found to be negligent or inefficient in the discharge of his duties will be reported to this office for discipline. It is not expected, however, that officers and employees will conduct their investigations in such manner as to annoy or interfere unnecessarily with the business of persons preparing or handling the aforementioned drugs. Officers in making their investigations should keep this clearly in mind. They will, however, see that the law and regulations are faithfully complied with in every instance; and it will be the duty of every person engaged in this business to afford all necessary facilities to such inspecting officers.

W. H. OSBORN,
*Commissioner of Internal Revenue.*

Approved:
W. G. MCADOO,
*Secretary of the Treasury.*

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1918

No. 526.

# In the Supreme Court of the United States.

October Term, 1915.

The United States, plaintiff in error,

v.

Jin Fuey Moy.

*In error to the District Court of the United States for the Western District of Pennsylvania.*

SECOND REPLY BRIEF FOR THE UNITED STATES.

WASHINGTON: GOVERNMENT PRINTING OFFICE, 1915.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE UNITED STATES, PLAINTIFF IN ERROR,
*v.*
JIN FUEY MOY. } No. 525.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.*

## SECOND REPLY BRIEF FOR THE UNITED STATES.

This brief is filed under leave of this court, and in reply to a brief filed for the defendant in error since the submission of the cause.

### I.

### THE HARRISON LAW WAS ONE OF THREE COMPANION MEASURES MEANT IN THEIR ENTIRETY TO CARRY OUT THE OBLIGATIONS OF A TREATY ENTERED INTO UNDER AUTHORITY OF THE UNITED STATES.

On *April 21, 1913*, the President sent a message to the House of Representatives, accompanied by a report from the Secretary of State. (Cong. Rec., vol. 50, pt. 1, 63d Cong., p. 283, House Doc. No. 33.)

The report disclosed efforts of this Government for years to prevent the use of opium, and to encourage

other, and especially the far-eastern countries, to suppress traffic therein; also how, on learning of the efforts of China, it inaugurated an international movement which led to a commission that met in Shanghai in 1909, at which many nations were represented—but without authority to negotiate a convention; and how, to obtain more positive results, the United States suggested and brought about a convention with full powers, which on January 23, 1912, signed an agreement, recommended by the Senate on October 18, and ratified by the President on October 27, 1913.

The Secretary pointed out that action, to be effective, must be by all interested, and concluded as follows:

> It has been stated that a reflex effect of the initiation by the United States of the international movement for the abatement of the opium evil took the form of important domestic legislation in nearly all countries concerned, and of very drastic legislation in some; yet, despite this, this government since February, 1909—the time of the passage of the Federal Opium Exclusion Act—has taken no further definitive action for Federal control of the opium and allied traffics in the United States. The passage of the Opium Exclusion Act was the first step which the Congress took to put our own house in order. There were three bills introduced in the last Congress which aim to supplement and perfect that act. I understand they are to be introduced in the early days of the present session, and will be

pressed to enactment; thus placing this government in a rightful position before the world. This is greatly to be desired.

After defining the meaning of raw, prepared and medicinal opium, morphine, cocaine, etc., and providing for the regulation of their export and import, the treaty declares that the contracting parties "*shall*" take measures for the gradual and efficacious suppression of the *use* of prepared opium (art. 6); that they "*shall*" enact pharmacy laws and regulations limiting the *use* to a medical and legitimate *use only*, and cooperate to prevent their *use for any other purpose* (Art. IX). Many other articles indicate the relation between regulation of *use*, and the general control in international commerce.

On *June 24, 1913*, Mr. Harrison (chairman in charge) called up the bill to regulate the manufacture of smoking opium (38 Stat. 277), stating it was one of three bills recently reported by his committee.

On *June 26, 1913*, he called up the bill to amend the act of February 9, 1909, prohibiting the importation of opium into the United States, 38 Stat. 275 (Cong. Rec., vol. 50, No. 3, 63d Cong., pp. 2167, 2168, 2192).

On the same day and immediately after the passage of the last-named bill, he called up the act here in question, stating it was the last of the three bills, and presented Report No. 23 of the Sixty-third Congress, first session, wherein it is stated that the bill was offered to carry out the obligations of the treaty, *supra*. (*ibid*, p. 2201). The act passed the House at once.

On *August 9, 1913*, the President transmitted to the Senate the report of the American delegates to The Hague (Sen. Doc. No. 157); said that the legislation had already passed the House; and urged the Senate to an immediate consideration thereof, so that the treaty obligations might be fulfilled. (Cong. Rec., 63d Cong., vol. 50, pt. 4, p. 3215.)

On *February 18, 1914*, this bill was reported with amendments; the House report as above was adopted by the Senate. (Sen. Rep. No. 258.)

On *March 28, 1914*, during an effort to postpone it, Senator Thomas (in charge of the bill) said:

> It is very necessary that the bill shall be enacted into law as early as possible, owing to the fact that it is necessary to carry out and make effective the provisions of a treaty relating to the same subject, concerning which three bills have been reported in the House, two of which have been enacted into law (Cong. Rec., 63d Cong., 3d sess., vol. 51, pp. 5670, 5671, 13, 754).

## II.

### AS AN EXERCISE OF THE TREATY-MAKING POWER THIS ACT IS CONSTITUTIONAL.

After prohibiting any State from entering into any treaty (Art. I, sec. 10); empowering the President, "by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur (sec. 2, Art. II); empowering Congress "to make all laws * * * necessary and proper for carrying into execution * * * all

other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof" (sec. 8, Art. II); and declaring that "the judicial power shall extend to all cases, in law and equity, arising under * * * treaties made or which shall be made" under authority of the United States (sec. 2, Art. III), the Constitution finally provides:

> This Constitution and the laws of the United which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. (Art. VI.)

Article IX of the Articles of Confederation conferred the same treaty-making power on the United States in Congress assembled. Under that provision several treaties had been negotiated before the adoption of the Constitution (Address of Mr. Root, I, Am. Journ. Int. Law, 273, 280)—notably that with Prussia in 1785, which conferred large rights on aliens in the several States, such as descent and devise of property, trade, exercise of religion, etc.; and the definitive treaty of peace with England of 1783, which gave British subjects the right to recover debts in sterling. The trouble was, however, that no power had been conferred on the Continental Congress to enforce treaties on the several States, and the latter treated them, especially the treaty of

peace, with open defiance. The evil of this situation was one of the pressing reasons for the new Constitution. In addition to the language of Madison in the Convention (Farrand, Vol. I, p. 316) and of Hamilton in the Federalist, No. 22, James Wilson made the following statement in the Pennsylvania convention (Elliott, Vol. III, pp. 280–1):

> The judicial power extends to all cases arising under treaties made, or which shall be made by the United States. I shall not repeat at this time, what has been said with regard to the power of the States to make treaties; it cannot be controverted, that when made, they ought to be observed. But it is highly proper that this regulation should be made, for the truth is, and I am sorry to say it, that in order to prevent the payment of British debts, and from other causes, our treaties have been violated, and violated too by the express laws of several States in the Union. Pennsylvania, to her honor be it spoken, has hitherto done no act of this kind; but it is acknowledged on all sides, that many states in the Union have infringed the treaty; and it is well known that when the minister of the United States made a demand on Lord Carmarthen, of a surrender of the western posts, he told the minister with truth and justice: "the treaty under which you claim those possessions, has not been performed on your part; until that is done, those possessions will not be delivered up." This clause, sir, will shew the world that we make the faith of treaties a constitutional part of the character of the United States; that we secure its per-

> formance no longer nominally, for the judges of the United States will be enabled to carry into effect, *let the legislatures of the different states do what they may.*

The following references to Farrand show the history of the provisions as to treaties in the constitutional convention. (Vol. I, p. 47; *ibid*, 244, 245, Res. 5 and 6 N. J. plan; Vol. II, pp. 28, 29; *ibid*, pp. 182, 183; *ibid*, pp. 389, 390; see also Vol. I, p. 297, Vol. II, 392, 393.) It is submitted that these references sufficiently show the intention to make all treaties (properly negotiated) binding generally throughout the new nation, and that not the slightest doubt was entertained that they could displace State laws and occupy a field of municipal legislation which otherwise the Federal Government could not cover.

In addition to the treaty of peace of 1783 with England and under the Constitution in 1794 the Jay treaty was signed. This excited great indignation in this country. The House of Representatives, taking the view that legislation was necessary to make that treaty effective, requested the President to lay the papers before the House. In reply thereto, Washington said, in part, as follows:

> Having been, a member of the general convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion upon this subject; and from the first establishment of the Government to this moment, my conduct

> has exemplified that opinion. That the power of making treaties, is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated, thenceforward becomes the law of the land. It is thus that the treaty making power has been understood by foreign nations; and in all the treaties made with them, we have declared, and they have believed, that when ratified by the President with the advice and consent of the Senate, they become obligatory. (Richardson's Messages of the Presidents, Vol. 1, pp. 194–96.)

In 1796 the case of *Ware* v. *Hylton*, 3 Dallas, 199, was decided, and by a court consisting of several members of the constitutional convention, it was solemnly determined that the act of Virginia in effect confiscating debts owing to British subjects was invalid as contrary to the treaty of 1783, made binding by the Constitution of the United States. The same view was taken in *Clerke* v. *Harwoode*, 3 Dallas, 342, as against a statute of Maryland of the same character sustained by the highest court of that State.

Like rulings were made as to the right of aliens to take property by descent or devise in *Chirac* v. *Chirac*, 2 Wheat., 259; *Hughes* v. *Edwards*, 9 *ibid*, 489; *Carneal* v. *Banks*, 10 *ibid*, 181; *Hauenstein* v. *Lynham*, 100 U. S. 483; and *Geofroy* v. *Riggs*, 133 U. S. 258.

These decisions all related to subjects exclusively within the sovereign power of the States, and outside of that of the Federal Government, except for the treaty-making power.

Like rulings have been made with practical uniformity in the State courts. The decisions are stated and commented on in Devlin on the Treaty Power, sections 239 to 266. Attention is especially called to *Succession of Robasse*, 49 La. Ann. 1405, wherein a treaty was held to override the taxing power of the State; to *Tellefsen* v. *Fee*, 168 Mass. 188, wherein a treaty was held to override the judicial power of the State; and *Wyman, petitioner*, 191 Mass. 275, wherein a treaty was allowed to override State laws regulating administration.

Careful search fails to discover any decision in either Federal or State courts wherein a treaty has been held invalid as against State law, or as occupying a field ordinarily within the jurisdiction of the State rather than of the United States under the Constitution.

The language of the Constitution itself is very clear. It declares that all treaties made under authority of the United States shall be the supreme law of the land, and binding upon the judges in every State, any law of such State to the contrary notwithstanding. It does not even provide, as is the case with laws, that treaties shall be made in pursuance of the Constitution.

It is sometimes argued that the words "under the authority of the United States" are equivalent to a provision that treaties must be in accordance with the Constitution, but it is submitted that this claim has no justification. The words "under the author-

ity of the United States" merely denote a treaty properly negotiated by those persons authorized to act on behalf of the United States. The necessity of presenting merely one face to foreign nations, and of negotiating with them as one people, makes it impossible to place the limitation upon the treaty-making power which is sometimes claimed to exist. Moreover, every person in every State is rightfully supposed to be a party to a treaty made on his behalf by the persons duly authorized under the Federal Constitution.

What limitations therefore can this court place upon this power in view of the specific language of the Constitution? We answer but one; namely, that the subject matter must be a proper one for international agreements. This requirement would exclude the cases so often referred to of a change in the internal government of the country by reason of a treaty, *e. g.*, one Senator instead of two for each State, a change in the boundaries of the States, etc. This was pointed out in the decision of the present Chief Justice in the insular cases, *Downes* v. *Bidwell*, 182 U. S. 244, 312, 313, wherein he intimates that a treaty of peace, while it can acquire territory for the United States, can not dictate the internal government of the territory so acquired.

Outside of this implied limitation, it is not believed that any others do or should exist. At any rate no limitation such as that a treaty can not interfere with the reserved powers of the States, and especially

with the police power, can be read into the Constitution of the United States. Article X as to reserved powers of States is but an express statement of what would otherwise be implied. The National Government is one of delegated powers, and can not act except within the scope of some power specifically given to it by the Constitution; but within the limit of these delegated powers it is supreme—a complete nation. When action is taken within the limits of a delegated power, that action is supreme over all laws of the States by the very terms of the Constitution itself, and so this court has held in innumerable cases. The doctrine was laid down vigorously by Chief Justice Marshall in *Gibbons* v. *Ogden*, 9 Wheat. 1, 209, 211, where the commerce power was held to override the right of the State to legislate in regard to navigation of one of its own rivers. This ruling has been followed by this court to the present day, except for the statements of certain judges in the *License Cases*, 5 Howard, 504; *New York* v. *Miln*, 11 Pet. 102; and the *Passenger Cases*, 7 Howard, 283, but these views have been in effect overruled by the subsequent decisions of this court, and especially in *Leisy* v. *Hardin*, 135 U. S. 100, where even Mr. Justice Gray, dissenting, after giving a definition of the police power which in effect includes all the sovereign activities of a State, admitted that the exercise of that power was subject to the exercise by Congress of the power over interstate commerce. This doctrine was applied by this court in the case of *McDermott* v. *Wisconsin*, 228 U. S.

115, in regard to the pure food law where the court said, pages 131, 132:

> While this is true, it is equally well settled that the State may not, under the guise of exercising its police power or otherwise, impose burdens upon or discriminate against interstate commerce, nor may it enact legislation in conflict with the statutes of Congress passed for the regulation of the subject, and if it does, to the extent that the State law interferes with or frustrates the operation of the acts of Congress, its provisions must yield to the superior Federal power given to Congress by the Constitution.

It can not be said that the power to enter into treaties is any more limited or any less important than the power to regulate interstate commerce. On the contrary, it includes that power and something more. It is indeed closely akin to the power to make war. If, then, the power to regulate commerce when properly exercised may override State police legislation, how much more is this the case as to the exercise of the treaty-making power.

In the recent case of *Mackenzie* v. *Hare*, decided by this court December 6, 1915, it was said in regard to the somewhat analogous question of citizenship in its international aspect:

> As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality it has the powers of nationality, especially those which concern its relations and intercourse with other countries. We should hesitate long before limiting or embarrassing such powers.

If the treaty-making power is to be subject to such a restriction, its limits must be defined. By approved decisions of this court the police power includes practically everything a State may do in the exercise of its sovereign power. In *C., B. & Q. Railway* v. *Drainage Commissioners*, 200 U. S. 561, the plaintiff in error argued that to drain lands merely to improve their usefulness would not be within the police power because it would not affect the public health or morals. This court said (page 592):

> We cannot assent to the view expressed by counsel. We hold that the police power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety.

If this broad view be taken of the police power, the claim now made would exclude from the treaty-making power all such functions. But this is directly contradicted by the uniform course of decisions heretofore referred to. In holding that the treaty power could override the laws of a State relating to the collection of debts, the right to take property by descent or devise, the right to sue in the courts of a State, the right to administer upon the estate of a decedent, etc., the courts have distinctly established that to some extent the sovereign powers of the States exercised for the convenience and prosperity of their citizens may be subordinated to the treaty-making

power of the Federal Government. This is well brought out in the article of Mr. Chandler Anderson on the "Extent and Limitations of the Treaty-making Power" (Am. Journ. of Intern. Law, vol. 1, Part 2, pp. 636, 665, 670). This article is especially referred to because the author is of the general opinion that the treaty-making power is not so extensive as is herein claimed.

Giving the term "police power" a more restricted meaning, the authorities seem to permit the Federal Government under the treaty-making power to enter this even more limited field. In *Worcester* v. *Georgia*, 6 Pet. 515, it was held that a treaty with the Cherokee Indians could override the provisions of a State law regulating the residence of persons within the Cherokee Reservation. In *United States* v. *43 Gallons of Whiskey*, 93 U. S. 188, it was held that a treaty with the Indians could override the State power to legislate with regard to intoxicating liquors; and that their introduction into an organized county of a State was thereby prohibited, although the United States could not have made this prohibition except by virtue of the treaty. There is nothing in the case of *Dick* v. *United States*, 208 U. S. 340, 359, which controverts this ruling. This court only confined the *Dick case* to the actual situation before it, and held valid, under the treaty-making power, the regulation as to introduction of liquor for a period of twenty-five years. In *Compagnie Francaise, &c.*

v. *Board of Health*, 186 U. S. 380, the majority of the court, in holding that the treaty in question was not meant to apply to the quarantine laws of the State of Louisiana, yet intimated no doubt that a treaty might, if properly worded, supersede such laws; and the dissenting Justices expressly held that the treaty in question did, in fact, supersede such laws. In *Maiorano* v. *Railroad Company*, 213 U. S. 268, no doubt is intimated either in the opinion of the lower court or of this court but that a treaty might affect a State law as to the right of aliens to sue for damages for personal injuries. In *Patsone* v. *Pennsylvania*, 232 U. S. 138, no doubt is intimated in the opinion of the lower court or of this court but that a treaty might affect a State law regulating the shooting of game and the carriage of weapons. (Reference is also made to the case of *In re Ross*, 140 U. S. 453, which, while not exactly in point here, shows that a treaty may regulate the manner in which a person shall be tried for murder in a foreign country.) So, in *United States* v. *Portale*, 235 U. S. 27, no suggestion is made by this court that a treaty might not regulate the matter of giving reports by persons harboring alien prostitutes.

In the Chinese cases arising in the Federal courts in California and Oregon, the rights of Chinese subjects under the treaties are upheld in several respects, contrary to State laws which can only be described as police laws. See the *Queue Cases*, 5

Sawyer, 552; *Baker* v. *The City of Portland*, 5 *ibid*, 566; *In re Ah Chung*, 6 Sawyer, 451; *In re Parrott*, 1 Fed. 481.

In 22 Op. A. G. 214, Attorney General Griggs held that a treaty might regulate fisheries in navigable waters within the territorial limits of the several States.

These authorities demonstrate that there is nothing in the Constitution of the United States which impliedly limits the scope of the treaty-making power to subjects other than those falling within the police powers of the several States. To so limit the former power would oblige this court to enter a boundless field by forcing it constantly to determine just what subjects fall within the police power of the States so as to delimit subjects that might properly be dealt with under the treaty-making power.

It is noteworthy that the strongest arguments against giving the treaty-making power its full scope come from the extreme advocates of the States' rights doctrine. They had their rise in a work by Mr. Calhoun, entitled "A Discourse on the Constitution and Government of the United States," and were expounded by his disciples on the bench of this court, and culminated in the *Dred Scott Decision*. They have recently been revived by Prof. John Randolph Tucker in his work on Constitutional Law, sections 353–357, and his attitude and argument are criticized by Senator Cullom in his speech on the treaty-making power, vol. 35, pt. 2, p. 1083, 57th Cong., 1st sess. It is noteworthy that the learned

author cites practically none of the authorities referred to above, and attempts to put the cases sustaining the right of aliens under treaties upon a ground not alluded to by the courts. The view is thus put forth by Mr. Bayard while Secretary of State in regard even to treaties regulating the descent of property to aliens (Moore's Digest, vol. 5, pp. 178, 179):

> A treaty is, it is true, the supreme law of the land, but it is nevertheless only a law imposed by the Federal Government, and subject to all the limitations of other laws imposed by the same authority. While internationally binding the United States to the other contracting powers, it may be municipally inoperative because it deals with matters in the States as to which the Federal Government has no power to deal.

It is true that, since a subsequent act of Congress may make a treaty municipally inoperative, the United States may remain bound internationally, although the treaty has not the force of supreme law under the Constitution; and the same thing would occur if the treaty required legislation to make it effective, and Congress refused to pass the necessary laws. But in these cases the people of all the United States acting through their constitutional organs have determined, for reasons appealing to them generally, to break an international compact. It is another and far different thing to say that though a treaty be solemnly negotiated by the agent of the United States, then consented to by the States in the Senate where

they have an equality, next ratified by the President who represents all the people, and finally approved as a whole by Congress, it may nevertheless be inoperative in or abrogated by the several States. This would be to go directly in the face of the provisions of the Constitution, and to make the National Government impotent in the making of treaties.

## III.

### THE PROVISIONS OF THE HARRISON ACT ARE THE PROPER SUBJECT MATTER OF A TREATY.

It can hardly be disputed that the regulation of the exportation and importation of opium, coca leaves, and their derivatives is a proper subject of international compact. Is the same true of (*a*) the regulation of their transportation in interstate commerce in this country; (*b*) the regulation of their manufacture in this country; (*c*) the regulation of the wholesale and jobbing trade in them in this country?

What principles govern this court in passing on the validity of legislation on these subjects, so admittedly enacted to comply with the obligations of a treaty? The treaty power is fully equal in scope and importance to any other expressly delegated power. The same principle applicable to the other powers must be applied to it, namely, that Congress may adopt any means it sees proper to carry it into effect, provided such means have a possibly reasonable connection with the end. To what extent will

the court set its judgment against the judgment of those who negotiated and ratified the treaty, and of the Congress which thought certain legislation necessary to carry it into effect; or pass on the propriety of the legislation, or be affected by its own views as to whether it was necessary or not? Before an act can be held unconstitutional as beyond the treaty-making power, this court must be clearly satisfied that its provisions have no reasonable connection with the legitimate end sought by the treaty.

The traffic in opium, cocaine, and their derivatives is most insidious. When handled in small quantities, they can be easily passed from hand to hand, and imperious desire gives the stimulus. Mere regulation of their importation and exportation is not sufficient, therefore, from an international standpoint. Unless they are followed beyond the point of either exportation or importation, they will inevitably again drift into the stream of international traffic. This has been recognized and agreed to by all informed persons interested in the matter in the several countries concerned. The Secretary of State but reflected this view, when he said (Sen. Doc. 33, 63d Cong., 1st sess., p. 4):

> * * * The entire movement illustrates a principle abroad in, and stamped with the approval of the world to-day, namely, that the peoples are now agreed that an evil such as the opium evil is never wholly national in its incidence, can never be suppressed by two nations alone, as was supposed to be the case

> with the Far Eastern opium traffic, but that such an evil as it appears in one State is a concomitant or reflex of a similar evil in other States, and therefore is international in its moral, humanitarian, economic, and diplomatic effect; further, that few evils can be eradicated by national action alone, and therefore that there must be cooperation of all the States directly or indirectly interested before such an evil is mitigated or suppressed. * * *.

It therefore was sincerely believed by those who thoroughly understood the subject that no international agreement was complete, if indeed possible, unless the several signatory powers agreed to follow the drugs beyond tidewater, and to trace and suppress their internal traffic and manufacture. Will this court say that the several nations did not have a possibly legitimate interest in, and a right to agree upon, this subject as a proper matter of international compact?

Accordingly an act of January 17, 1914 (ch. 9), was passed affirming the prohibition of importation of opium and its derivatives, *except for medicinal uses*, and adding a prohibition of its exportation, and of the exportation of cocaine, and their derivatives, in accordance with the obligation assumed under article 13 of the treaty; and the other act of January 17, 1914, (ch. 10) was passed regulating the manufacture of opium for smoking purposes by levying a prohibitory tax and requiring a prohibitory bond, and making it unlawful to manufacture without pay-

ing the tax and giving the bond—this enactment being in fulfillment of article 6 of the treaty.

Having thus regulated the importation and exportation of opium and its derivatives, and to some extent of cocaine and its derivatives, and the manufacture of opium for smoking purposes, there remained to be dealt with the regulation of the interstate traffic in opium and cocaine, and the regulation of the wholesale and retail dealing in them. Both of these subjects are covered by the Harrison Act, which was meant to complete the entire structure, the former by section 4, and the latter by the other sections of the act. The main object of the Harrison Act, as has been shown in detail in the briefs heretofore filed on behalf of the United States, was to establish a system of registration, records, and publicity along the lines suggested in articles 10, 11, and 12 of the treaty, so as to follow to finality the traffic in these drugs and their derivatives. As has been stated, to regulate the importation and exportation alone would not be enough. To regulate the manufacture would not be enough. To regulate merely their interstate traffic would not be enough. The nature of the drugs is such that it would be impossible to make any international agreement effective (or at any rate Congress may properly have so thought), without tracing them beyond even their interstate traffic into their actual sale and distribution. This the Harrison Act attempted to do by its system of registration, order forms, prescriptions, sales records, etc. Surely it ought not to be said

that such a system can have no reasonable bearing upon the international agreement, nor any fair possible connection with its effectiveness.

Having, however, proceeded this far, section 8 of the Harrison Act is but the natural final step, and just as fairly necessary to complete the international system. That section does not punish the *use* of drug by an individual who has not registered and paid the tax; it merely punishes its possession by him, unless he can show that he has obtained the drug through the regular public process prescribed by the act. Bearing in mind, what must be continually insisted upon, that these drugs are of an exceptional nature, and the regulation of them subject to peculiar difficulties, it is not extraordinary that it should be deemed essential, to the complete performance of the international compact, that mere possession of these drugs by unauthorized persons within the confines of one of the signatory powers should be deemed prima facie only unlawful.

If the "Prize-Fight Film Act" of July 31, 1912 (37 Stat., 240), (which this court of December 13, 1915, held constitutional in *Weber* v. *Freed*, No. 644, October term, 1915, and which makes it unlawful to import such films when "designed to be used" or available to "be used for * * * public exhibitions"), had further provided that possession, within the United States, of any such film picturing a fight occurring abroad, should be prima facie an unlawful possession, such a proviso would have been a natural and proper means of aiding to

produce the result sought. *Adams* v. *New York*, 192 U. S., 585; *M. J. & K. C. R. R. Co.* v. *Turnipseed*, 219 U. S., 35. (Statutes making possession of the dead bodies of game birds or animals during the closed season presumptive evidence of unlawful killing are a common example of such legislation. See also similar provisions in the Internal Revenue Acts.)

As films designed for use in public exhibitions may not be brought into this country, under the Film Act, *supra*, so opium designed for other than medicinal uses may not be brought in under the Harrison Act. And section 8 of that act does not attempt to punish the *use*, but only the *unlawful* holding.

It declares such a holding to be established (prima facie only) after the Government shall have proven a possession of the drug within the United States, and that the possessor had either not paid the tax or had not been registered. The presumption may be overcome. It is potential only in the absence of other evidence tending to bring the holder within the benefit of the exceptions declared by the act itself. It is but a rule of evidence prescribed because the act provides just how one not "tax paid" or not "registered" may lawfully hold; and because the means of proving the holding to be lawful under the act are within the knowledge and reach of every holder, while the evidence to prove the contrary might be of a negative character impossible to assemble, or might be beyond the power of the Government to discover.

The experience of those who have long studied the use and traffic in these articles has shown them that no law is efficacious unless it completes a system which, beginning with production and following through importation, exportation, manufacture, sale, and distribution, shall finally reach the person in possession of the drug without lawful excuse.

It is felt that any action Congress might properly take with regard to these drugs, in the absence of any treaty, and either under the power over imports or the commerce power, would fall so completely within the broader field of its legitimate functions in aid of the treaty power, that for this reason we do not discuss this case from the standpoint of either of the first-named powers.

It is therefore submitted:

(*a*) That the treaty placed upon the United States the obligation to pass laws regulating—as the three acts herein referred to have regulated—the importation, exportation, manufacture, sale, distribution, and possession of these drugs;

(*b*) That these three acts were passed as a single plan to fulfill those obligations; and

(*c*) That every provision of the Harrison Act, including those of section 8, has a reasonable and fair relation to the international object of the treaty.

WM. WALLACE, JR.,
*Assistant Attorney General.*

DECEMBER, 1915.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE UNITED STATES, PLAINTIFF IN ERROR,
*v.*
JIN FUEY MOY. } No. 525.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.*

## REPLY BRIEF FOR THE UNITED STATES.

The contentions of defendant in error may be summarized thus: (1) The Harrison Drug Act is exclusively a revenue measure; (2) it does not deal with consumers or those having mere possession, but is limited to those who are required to register; (3) it was not passed pursuant to the obligation of any treaty; (4) upon the Government's reading, it would be unconstitutional (*a*) as an invasion of the State's police power, and (*b*) as authorizing punishment of innocent men.

THE ACT IS NOT EXCLUSIVELY A REVENUE MEASURE. IT WAS ALSO PASSED TO COMPLY WITH THE OBLIGATIONS OF A TREATY.

Because these features (points 1 and 3) involve the general nature of the act we consider both at once.

To appreciate the purpose of this act we must have before us the history of the previous drug legislation.

Prior to 1890 there had been none save the tariff. The Act of *October 1, 1890*, 26 Stat. 620, taxed "opium manufactured in the United States for smoking purposes," forbade manufacture by other than American citizens, and punished violation by fine and forfeiture. And the amendatory act of March 31, 1897, 29 Stat. 695, provided for the sale of forfeited opium.

The Act of *February 9, 1909*, 35 Stat. 614, prohibited importation save for medicinal purposes of opium or its derivatives or preparations, with provisions for forfeiture and destruction of all unlawfully imported. Possession was made prima facie evidence of unlawful importation. In administrative practice "derivatives and preparations" were limited to such as were available for smoking purposes and domestic manufacture continued.

Between 1906—beginning in that year—and 1914 the United States instigated a movement which ultimately produced the International Opium Commission, meeting at Shanghai, China, in 1909, with representation from thirteen countries, and also later brought about the International Opium Convention (38 Stat. 1929, *et seq.*), a treaty signed at The Hague on January 23, 1912, by the representatives of twenty-

four countries, which was ratified by the Senate on October 18 and by the President on October 27, 1913. This treaty, among other things, obligated the contracting parties, as follows:

ARTICLE 6.

The Contracting Powers shall take measures for the gradual and efficacious suppression of the *manufacture, the internal traffic in* and *the use of prepared opium* in so far as the different conditions peculiar to each nation shall allow of this, unless existing measures have already regulated the matter.

ARTICLE 9.

The Contracting Powers shall enact pharmacy laws and regulations in such a way as to limit the manufacture, the sale and *the use* of morphine, cocaine and their representative salts to *medical* and *legitimate uses* only, unless existing laws or regulations have already regulated the matter. They shall cooperate amongst themselves in order to *prevent* the *use* of *these drugs for any other purpose.*

ARTICLE 10.

*a.* to limit the manufacture of morphine, cocaine and their representative salts to the premises and localities alone which shall have been authorized to this effect or to keep themselves informed as to the establishments and places where such drugs are manufactured, and to keep a register thereof;

*b.* to demand that all those who manufacture, import, sell, distribute, and export

morphine, cocaine, and their respective salts shall be provided with an authorization of a license to carry on these operations, or shall make an official declaration thereof to the competent authorities;

*c.* to demand of these persons the register on their books the quantities manufactured, the importations, the sales or any other transfer and exportation of morphine, cocaine and their respective salts. This rule shall not apply necessarily to medical prescriptions and to sales made by duly authorized pharmacists.

ARTICLE 11.

The Contracting Powers shall take measures to prohibit in their internal commerce all transfer of morphine, cocaine and their representative salts to all nonauthorized persons, unless existing measures have already regulated the matter.

ARTICLE 12.

The Contracting Powers, taking the differences in their conditions into account, shall use their best efforts to limit the importation of morphine, cocaine and their respective salts, to authorized persons.

ARTICLE 24.

With regard to the laws, regulations and other measures provided for by the present Convention, it is agreed that the drafts necessary to this end shall be drawn up not later than six months after the going into effect of the Convention. With regard to the laws,

> these shall also be proposed by the Governments to their parliaments or legislative bodies within this same period of six months, and in any case at the first session which shall follow the expiration of this period.

Three bills were submitted to Congress in 1913 in accordance with a presidential message of April 21, 1913, in which was recommended—

> —the enactment of the requisite anti-drug legislation to which the Government is pledged internationally * * *. At this vital period to fail to take the few final steps * * * to conclude the work would be unthinkable and I, therefore, trust that there may be no delay in the enactment of the desired legislation. (House Document No. 33, 63d Cong., Vol. 50, Part I, Congr. Rec., p. 283.)

And in the report of the Secretary of State accompanying the message, the latter referred to these three bills as about to be reintroduced for the above purpose. (*Ib.* 295.) The measures therefore originated in the State Department and not in the Treasury Department.

On January 27, 1914, two of these bills were enacted into laws. One (38 Stat. 275) amended the act of 1909 by adding new penalties and presumptions, by forbidding the passage of smoking opium through the United States, and prohibiting the exportation of opium, cocaine, or salts or derivatives of either. The other (38 Stat. 277) levied a prohibitive tax—$300 per pound—on the manufacture of opium in the United States for smoking purposes.

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Both the Senate and the House Reports on the third of these bills—the Harrison Drug Act—disclose that in the Committee's opinion the United States had obligated itself internationally to stop the use of those drugs save for legitimate medicinal purposes. (Senate Report No. 258, 63d Cong., 2d sess., pp. 1, 3, 4.)

The House passed the first of these three bills on June 24, 1913, and both the others two days later. On August 9, 1913, the President, in a message transmitting a report (Senate Document No. 157) of American Delegates to The Hague Convention, urged the Senate to immediately consider these bills in order that treaty obligations might be fulfilled and faith kept with the other nations parties to the Convention. (Cong. Rec., 63d Cong., vol. 50, Part IV, p. 3215.) This was the reason assigned for forcing this particular bill, which became separated from the others before final passage. (Cong. Rec., 63d Cong., 1st sess., vol. 51, pp. 5670, 5671, and 13754.)

Immediately before the passage of the Harrison Act in December, 1914, this condition obtained:

(1) Manufacture of smoking opium in the United States was subjected to an enormous tax and its passage through the United States and from foreign countries was prohibited.

(2) The importation of opium, save for medicinal purposes, was prohibited, as was the case with its smoking derivatives and preparations.

(3) Neither it nor cocaine, nor the salts, derivatives or preparations of either, could be exported.

In the following respects the prior acts failed to restrict to legitimate medicinal uses:

(1) Derivatives and preparations of opium for other than smoking purposes could be imported and used here at will.

(2) If opium or its derivatives or preparations, though not imported for medicinal purposes, fell into innocent hands it was relieved of its contraband character and could be freely dealt in and used.

(3) Interstate traffic in these drugs was unrestricted.

(4) Whether a given drug was a derivative or preparation of opium was in each case an open question of fact.

The Government insists that by this Harrison Act Congress meant to, and did close every one of these gaps, thereby completely fulfilling the treaty obligations. Interstate commerce was controlled. Cocoa leaves and their derivatives were reached. To "derivatives and preparations" in the act of 1909, was added "compounds, manufactures, salts," and morphine, heroin, codeine, cocaine, alpha- and beta-eucaine specially listed, were established conclusively as derivatives, etc. In detail, by sections, it provided:

> Sec. 1: Dealers, etc., must register and pay a tax of one dollar per annum with exception of employees of registered persons and certain officers. It was made unlawful to deal in, etc., unless registered.

Sec. 2: Declared it unlawful to sell, etc., except on buyer's orders issued by the Collector to registered persons only for use in obtaining drugs for the conduct of a lawful business therein. Exceptions were made of patients getting from registered doctors or registered dealers under prescription and of officers and exporters.

Sec. 3: Indicates that registration was meant as a check on the amounts used by dealers, etc.

Sec. 4: Made it unlawful for unregistered persons to transport and deliver in interstate movement; with exceptions of carriers, employees of registered persons, those delivering for physicians, and certain officials.

Secs. 5 and 7: Are immaterial to this inquiry.

Sec. 6: Made the act inapplicable to preparations or remedies containing a trifling quantity of the drugs.

Sec. 8: Is the disputed section.

Sec. 9: Carries the penalty.

The Committee Reports on the bill make it plain that the fundamental purpose of Congress was not merely to raise revenue, but rather to comply with the solemn obligations of the treaty of 1912, the object of which was to restrict narcotics to legitimate medicinal uses. The assertion of defendant in error that it was not passed pursuant to any treaty, shows that he had no knowledge of this treaty or its obligations when he strove to impress his view of the meaning of this act upon the court below and upon

this court. Had there been no such indication by Committee Reports, that Congress was endeavoring to comply with the treaty obligation, and that the registration and its accompanying fee was a mere means to that end, would it not be absurd to find in a registration fee of $1 per dealer per year, and a charge of not to exceed $1 per hundred for buying order blanks, the sole motive for such a piece of legislation as this? Remembering that the original tax on manufactured opium was $10 per pound, and that such persons as carriers, warehousemen, officials of certain institutions, nurses, and others are by the act relieved from the duty of registering, is it not clear that the mere desire to gain registration fees could not alone have prompted the act?

Moreover, the provisions for record of sales found in section 1 as well as the provisions of section 3 requiring dealers to report to Collectors all their purchases under oath, demonstrate that this whole scheme of registration was to enable the Government to know the movement of the drug, from its manufacturer outward through the various dealers, and even into the hands of individually named consumers.

It may be claimed that portions of the House Report (adopted and quoted in the Senate Report, *supra*) indicate that the act was passed solely for revenue purposes, and that the Committee thought it would not be constitutional except as an exercise of the taxing power.

It is submitted, however, that this is not a correct reading. The statement in the report that there is need of Federal legislation, not only to control the foreign and interstate traffic in habit-forming drugs, but *also* "to aid both directly and indirectly the States more effectually to enforce their police laws designed to restrict narcotics to legitimate medical channels," and the further statement that the State laws "will remain ineffective to a large extent until the Federal Government acts in support of them," shows clearly that the Committee had in mind that the Harrison Act should to some extent be a police measure, and operate to that extent over a field perhaps also covered by the laws of some States.

The subsequent statement that it had been decided "that only by customs law and by the exercise of the Federal taxing power can the desired end be accomplished," does not mean that the desired end could only be constitutionally accomplished in this manner, or that the Committee is ignoring the treaty-making power. The report simply points out that Congress did not deem it practicable to destroy the evil by general legislation prohibiting the sale and use of the drugs under penalties, but conceived it more practical to establish a system of registration, taxation, order forms and records, under supervision of the Bureau of Internal Revenue. Thus drugs could be traced from the time of their importation to their consumption; evidence of violation of law could easily be procured; and records could be made, available to collectors and revenue agents, enabling

them to check illegitimate use at its source by controlling dealers, and more effectively to reach consumers improperly obtaining the drugs.

THE ACT—AND PARTICULARLY SECTION 8—IS NOT LIMITED TO THOSE PERSONS REQUIRED TO REGISTER.

We must remember that upon this writ of error under the Criminal Appeals Act, because the court below did not decide any constitutional question, we are to determine what Congress did or tried to do, and not whether it had the power to do it.

Of course, the rule that a constitutional reading must be adopted if possible, attends interpretation here as elsewhere, but that rule is subject to the implied qualification that two readings—one making the act constitutional and the other making it unconstitutional—must be reasonably available under the language of the act without violating other rules of interpretation. If the act under recognized rules of interpretation is subject to but one reasonable reading—and we insist that such is the case here—this court will not substitute a different reading of its own tending merely to make the act constitutional. *United States* v. *Bennett*, 232 U. S. 299, 304. The foregoing is not an admission that this act, if read according to the Government's contention, would be unconstitutional either in whole or in part.

The following considerations make for that reading:

1. In the definition of the unlawful act in the second paragraph of section 1 the language used is "it shall be unlawful for any person *required to register*

under the terms of this act to produce, etc., * * * without having registered and paid the tax," etc. In section 8, on the other hand, this language is used: "It shall be unlawful for any person not registered under the provisions of this act and who has not paid the special tax provided," etc.

The language in italics used by defendant in error himself (his brief, p. 8, foot) shows that to uphold his reading he must read into section 8 the very words that are expressly used in the second paragraph of section 1, but are wholly omitted from section 8.

When we find that Congress expressly used the words of limitation that defendant in error would read into section 8, in section 1 only, its refusal to use them in section 8 can hardly be regarded as an accidental omission. That it did not intend to restrict section 8 as it had section 1 is further evidenced by section 4, wherein the definitive language of section 8 rather than of section 1 is also employed. If the restrictive language "required to register" had been inserted in section 4 it would throw the interstate commerce movement wide open to all who, because not "conducting a lawful business in said drugs," would not be "required to register." However we read the language "any person * * * not * * * registered," etc., in section 4, so must we read the like language in section 8.

2. If this contrast between section 1 and sections 4 and 8 did not exist, nevertheless we may not read the words "required to register" into section 8 if we could otherwise give it reasonable meaning.

*United States* v. *Goldenburg*, 168 U. S. 95; *United States* v. *Portale*, 232 U. S. 27, 30.

3. Here the language may not only be reasonably read without the insert; but, if the words be taken according to their natural signification, it can not be reasonably read otherwise than as the Government reads it. It is therefore self-interpreting.

In Black on Constitutional Law, section 49, page 68, the author quotes from *Newell* v. *People*, 7 N. Y. 9, 97, as follows:

> The first resort in all cases is the natural signification of the words employed * * *. If thus regarded the words embody a definite meaning which involves no absurdity and no contradiction between different parts of the same writing, then that meaning * * * is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction.

4. From the class created by section 8 there is specially withdrawn employees acting under a registered person, officers of certain institutions, nurses, warehousemen holding for registered persons, carriers, and those holding under bona fide prescriptions.

The first two, by force of express exceptions in section 1, are not within the class required to register; and the last four are equally outside that class because none of them either "produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away" these drugs in the conduct

of a regular business. Some of them are also withdrawn by force of exceptions a, b, c, and d in section 2. Thus the construction insisted on by defendant in error would put Congress in the attitude of having withdrawn from the class created by section 8 six different groups of persons who never had been included in the class at all. On the other hand, the Government's reading makes each exception withdraw from the class so created a group that otherwise would have belonged thereto.

5. As section 4 withdraws employees of registered persons, those delivering for registered persons and officers of certain institutions, the reasoning in the last paragraph would apply to it also.

6. The words "prescribed in *good faith*" in section 8 would be absolutely useless and unnecessary under the reading of the defendant in error since no one holding under a prescription whether issued in good or bad faith could be "required to register."

7. The special exceptions in section 2 found in advance of the general business clause are a necessary qualification of the otherwise broad language of the first sentence.

8. Referring to section 8 as making "further provision to prevent" the things made unlawful by section 1, and calling it a "sort of clincher" (brief, pp. 13, 15), defendant in error concedes, as he must, that if read as he would read it that section adds nothing to what has gone before. The

act upon that reading would punish only (1) failure to register by those required; (2) purchases or sales by unregistered persons who could have registered; (3) purchases by registered persons without the use of order forms; (4) failure by registered persons to return on oath the statement of drugs purchased; (5) interstate commerce movement by those required to, but who had not, registered.

Such a result falls far short of the performance of the treaty obligation. Despite the act, everyone not required to register could move the drugs with impunity in interstate commerce; all addict consumers could freely get and use them; any registered person himself buying on orders could freely sell to addict consumers (because section 2 makes such sales unlawful *only* when the drug is *not* bought by the dealer, etc., on buying orders).

On the other hand, if read as the Government would read it, the direct tendency of the act is to restrict the use of the drugs to legitimate medicinal purposes.

Judge Story, speaking for this court in *Prigg* v. *Pennsylvania*, 16 Pet. 539, 612, says:

> How then are we to interpret the language of the clause? The true answer is in such a manner as consistently with the words, shall fully and completely effectuate the whole object of it. If by one mode of interpretation the right must become shadowy and unsubstantial and without any remedial power adequate to the end, and by another

mode it will attain its just and secure its manifest purpose it would seem upon principles of reasoning absolutely irresistible that the latter ought to prevail.

Assuming a draftsman of such a bill as the Harrison Act were seeking to frame a measure to comply with the treaty obligations, would he not make in the outset two large groups of those who might be connected with the drug in order to keep track of its movement, viz, those dealing with the drug in the conduct of a business, and those who were mere consumers? And having provided for registration of the former, would not the natural after division for brief reference be (*a*) those registered, and (*b*) those unregistered—the latter including as well those who could not register as those who might but had not? Then from the broad class of unregistered thus created, would he not withdraw those members of the class who for medicinal purposes only might lawfully have possession of the drug? Such, we submit, would be the natural method of framing such a bill; and such was the method pursued in this instance.

### CRITICISM OF SOME FEATURES OF THE ARGUMENT OF DEFENDANT IN ERROR.

It is not true as charged in the brief (p. 3) that under the Government's reading, a man finding the drug or who has it accidentally without, perhaps, even knowing that he had it in his possession, could be convicted. He must "have" it "knowingly and wilfully." These are implied elements in the defini-

tion of every such offense; and the words "have in his possession" in section 8 mean "*hold* in his possession." But the criticism, if true, would apply equally to the class as delimited by the reading of defendant in error as it would to the class created by the Government's reading. The suggestion, therefore, is of no force as an aid to interpretation.

To the suggestion that Congress would have provided for registration of mere possessors if it had so desired (brief, p. 7), it is enough to say that no one claims that mere holders or consumers should be required to register. Such is not at all the theory of the Government. Registration was the scheme, as stated above, to keep track of the purchase, handling, and consumption of the drugs; all of which could be completely accomplished by registering those only who carried on business with these drugs.

Article 13 of the regulations of the Commissioner (brief, p. 8) is entirely in harmony with sections 1, 2, and 6, and because of the feature dealt with could not have been made broader even under the Government's reading.

The title does not support the reading of defendant in error (brief, p. 11).

A title, though in a sense part of the act, has little, if any, weight in interpretation where, as in Congressional enactments, there is no requirement that the subject of the act shall conform to the title. *Lapina* v. *Williams*, etc., 232 U. S. 78. And whatever force might otherwise be given to it is wholly neutral-

ized by the language "and for other purposes" found in the title itself. The reason that prominence was given to the registration tax feature in the title was that Congress thought, as appears from the Committee Reports—and whether mistakenly or otherwise we need not now inquire—that to the accomplishment of the obligation of the treaty it would be desirable to give it the appearance of a taxing measure.

We agree that repetition in section 8 of the exemptions found in the earlier sections is significant (brief, pp. 12, 13); not, however, as claimed by defendant in error, to demonstrate restriction to registered persons, but rather as indicating the very opposite. And this because none of the classes exempted in the provisions anterior to section 8 are required to register.

If the section was meant but to create a further presumption as to possession by those persons defined in the class created by section 1—dealers, etc.—(brief, p. 13), would not that presumption have been declared in section 1 itself? Or, if for any reason developed in a new section, would not the presumption have been limited to the section (1) to which it alone would relate? The fact that the declaration of presumption in section 8 is made to apply both to section 1 and section 8 of itself shows that these two sections did not provide merely for the same condition.

The assertion by defendant in error that those doing an illicit business are amenable to the act (his brief,

p. 23) destroys his whole contention; for only those doing a lawful business may have buying order forms and those entitled to have buying order forms are required to register. He in effect, therefore, declares amenable to the act persons neither entitled nor required to register. He urges, of course, to avoid inconsistency that they are required to register though doing an illicit business. This not only opposes the very letter of section 2 limiting the procurement of order forms to those engaged "in the conduct of a lawful business in said drugs" but would result in either allowing them to procure buying order forms for illicit business, or buying without use of the forms at all—each contrary to the letter and spirit of the act. There was no purpose of giving advantage to illicit dealers and their customers over lawful dealers and their customers, or to drive the whole business of selling to customers into illicit hands. Nevertheless, if the judgment below be here affirmed and Jin Fuey Moy allowed to go free all addicts may hereafter purchase with impunity from illicit dealers; the law will be a "dead letter"; and the reform movement in worse case than before the law was enacted.

Respectfully submitted.

WM. WALLACE, JR.,
*Assistant Attorney General.*

DECEMBER, 1915.

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IN THE

# Supreme Court of the United States

**No. 525 OCTOBER TERM, 1915.**

THE UNITED STATES, Plaintiff-in-Error,

vs.

JIN FUEY MOY.

In Error to the District Court of the United States for the Western District of Pennsylvania.

## Brief in Behalf of Defendant in Error.

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IN THE

# Supreme Court of the United States

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**No. 525 October Term, 1915.**

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THE UNITED STATES, Plaintiff-in-Error,

vs.

JIN FUEY MOY.

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In Error to the District Court of the United States for the Western District of Pennsylvania.

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## BRIEF ON BEHALF OF DEFENDANT IN ERROR.

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### Statement of Question Involved.

Whether under the Harrison Drug Act it is unlawful for a person who is not required, or permitted to pay the tax to have in his possession or under his control any quantity of said prescribed drugs in excess of the insignificant quantities allowed in Section 6.

Or

Whether Section 8 of said Act does only apply to persons mentioned in Section 1 of said Act.

## Purpose of This Brief.

The purpose of this Brief is to prove:

(1) That the operation of said Harrison Drug Act is legally limited to persons who should pay the revenue tax prescribed and making regulations to prevent evasions or violations thereof.

(2) That said Act is a Revenue Act and not a police regulation directed toward suppression of drug traffic within the several states.

(3) That said act does not apply to mere consumers, or possessors not engaged in or intending to produce, sell, compound, manufacture, import, exchange, dispense, distribute or give away the prescribed drugs.

(4) That said act does not attempt to render illegitimate; the possession whether acquired before or subsequent to the passage of said act, if the possessor is not one of the class of persons mentioned in the first six sections of said act, or to declare a static position bare of unlawful intent a crime in itself.

(5) That the contention of the Plaintiff in Error, if allowed, would construe a large class of persons to be criminals without proof of a criminal intent or an unlawful act.

## Argument.

Counsel for defendant contends that, upon an inspection of the whole record together with the Act of Congress under which said indictment is laid, it will be found that the learned Judge of the District Court properly granted the motion of defendant to quash said indictment and rightfully decided that acts alleged did not constitute a crime under the laws of the United States.

In support of said contentions, we submit the following propositions and our reasons in support thereof:

1. THE HARRISON DRUG ACT LIKE ANY OTHER ACT OF CONGRESS MUST BE CONSTRUED TO AVOID ABSURDITIES.

If it is true, as the Government contends, that any person who might be found with said prescribed drugs in his possession and who was not entitled to register and pay the tax or an employee or agent of such person so taxable would be guilty of a crime against the United States, regardless of the fact that said drugs might be in his possession without his knowledge, or the intent on his part to give, sell or distribute, but only for his own use, or that his possession was acquired before the Act was passed, or his possesion the result of an accidental finding since the passage of said Act, nevertheless unless such person so indicted could produce the prescription or other authority permitting said possession, he could

be declared guilty without ever having done an unlawful act or evinced an illegal intent.

However the proper rule of interpretation would strike down such unusual contention.

As said by Justice Field in

*United States vs. Kirby,* (7 Wallace) 74 U. S., 482, 486:

"All laws should receive a sensible construction.

"General terms should be limited in their application so as not to lead to injustice, oppressive or absurd consequences. It will always therefore be presumed that the legislature intended exception to its language which would avoid results of this character.

"The reason of the law in such cases should prevail over its letter, and we should discard any construction which leads to absurd consequences."

In which case Kirby, an officer of a State Court, was indicted for "obstructing the carriage of the mails" in serving a civil process, to-wit: a bench warrant on a mail carrier. The indictment was quashed for reasons above set forth.

It would therefore seem that if Government's construction is correct, our entire population of 100,000,000 or more, less those not mentally or legally responsible, might be liable to indictment under this act, instead of just the class of persons enumerated therein, who are in

some way connected with opium traffic, in importing, manufacturing, selling, producing, compounding, dispensing, exchanging or giving away; *and thus an act clearly intended for a limited class would be made to apply to all classes.*

THE HARRISON DRUG ACT DOES NOT APPLY TO MERE CONSUMERS.

The first count in the indictment in the case at bar specifically charged the defendant with conspiracy

> "to commit an offence against the United States, to-wit: to unlawfully have in the possession and under the control of said Willie Martin, one dram of morphine sulphate, he, the said Willie Martin, not being registered, etc., * * * he, the said Jin Fuey Moy, then and there well knew that the morphine sulphate then and there prescribed was not given for medicinal purposes, but *for the purpose of supplying one addicted to the use of opium,* etc. * * * contrary to the form of Act of Congress in such case made and provided, and against the peace and dignity of the United States." (R. 2)

The "one" referred to in said count of said indictment was the said Willie Martin, and the nine subsequent counts are the same except different date is fixed for each and quantity of prescribed drugs alleged as "unknown."

It is therefore clear that *the Act complained of, was the putting the consumer in possession and control,* by

the defendant who was duly registered and otherwise complied with said Act of Congress.

The Act in question can by no reasonable construction, in absence of declared purpose not written in the law, render the possession by a consumer a criminal act.

As was so accurately stated by Judge Bourquin in

*United States vs. Woods*, 224 Fed., 278, 280:

"Having in mind that taxes can be imposed and statutory offenses created only by direct, clear and apt language, it seems clear that there is nothing in the act imposing the duty of registration and payment of taxes upon *mere consumers of the drugs.*

"They are not within Section 1, and Section 8 does not purport to *extend registration* and *taxation* of *the act to them*, but only to make unlawful mere possession of the drugs by any person of the classes by Section 1 required to register and pay and who have not." (Italics ours.)

The further reasoning of Judge McCall in

*United States vs. Wilson*, 225 Fed., 82, 84,

upholds our contention that section 8 of said act does not apply to those persons, *who are consumers only.*

"The question now arises, to when does the clause any person not registered under the pro-

visions of this act and who has not paid the special tax in eighth section refer? Clearly it refers to, and at least includes those doing the things specially named in the first section. Does it refer to and include others doing things not specifically named in the act, viz: Those having in their possession or under their control the drugs named for their personal consumption? It seems to me that to so hold would be for the Court to enlarge the list of those whom Congress required to register and pay the special tax.

To that extent it would be an amendment of the act. This is not the function of the Court."

(b) SAID ACT DOES NOT APPLY TO MERE POSSESSORS OF SAID DRUGS.

A careful reading of the entire Act of Congress will disclose the fact that it contains no provisions attempting to regulate possession, except of those who are required to pay the tax. No other class of persons are mentioned and if Congress desired mere possessors to register appropriate words would have been inserted requiring every one within the jurisdiction of the United States who now is, or may thereafter become the possessor of any of the prescribed drugs to notify the Collector of Internal Revenue or other officer, stating kind, quantity and when received; however no such provisions were included in this otherwise comprehensive enactment.

We do find however, that agreeable to the provisions of said Act, the Commissioner of Internal Revenue did require such statement from those who come within the class required to register.

> "Art. 13. Any person, firm, or company dispensing directly to consumers any of the drugs herein referred to will, on March 1, 1915, prepare and keep on file an inventory of all such drugs, (other than preparations or remedies specially exempt under the provisions of section 6 of the act), on hand at that date.
>
> No special form of inventory is required, but the inventory must fully and clearly set forth the quantity of each kind of such drugs, preparations or remedies *so held,* and must be verified by oath not later than 5th day of March, 1915."
>
> (See page 34 of Brief of Plaintiff in Error).

It will be observed that due regulations were made for those who were to pay the tax, and inventory taken as of the day this particular Act of Congress went into effect.

While the Government contends that section 8 was intended to apply to "Those who had no legitimate occasion for the possession of the drugs" (p. 13 of Plaintiff's Brief), there is no way of ascertaining who might be legally in possession, except that it is declared unlawful for a person to possess said drugs who is *required but has neglected* to register, and the argument consists in begging the question in the most illusory

form, as the plain, clear and explicit words of said act are the only means of defining the possession as legal or illegal:

As was said in the case of

*United States vs. Wilson*, 225 Fed., 82, 84:

"If Congress had intended to require persons to register who had in their possession or under their control drugs for any purposes other than that stated in the Act, it would seem that it would have been a simple matter to have said so. It is clear to my mind that the language quoted from eighth section when read in connection with the first section of the Act *refers only* to those mentioned in the last named section, and however desirable it may be to have the list enlarged the Court is without authority to do it."

II. THE WORDS "ANY PERSON" IN SECTION EIGHT CAN ONLY APPLY TO THE PERSONS UPON WHOM THE ACT WAS INTENDED TO OPERATE, TO-WIT: THOSE MENTIONED IN THE TITLE AND PREVIOUS SECTIONS

Said section provides *inter alia*:

"That it shall be unlawful for *any* person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act to have in his possession or under his control any of the aforesaid drugs, and such possession or

control *shall be presumptive evidence of violation of this section* and ALSO of a violation of section one of this Act." (Page 26, Plaintiff's Brief.)

It is therefore clear that this is a sweeping clause to gather in all of the class, who were properly grouped under Section one and might seek to evade the provisions thereof, but was never intended to include persons who could not qualify so as to register, being merely in possession and control without intention to handle as prescribed in said section one. As the punishment provided is *coupled with* violation of Section one, the culprit must therefore have been amenable to Section one, in order to subject him to liability of a violation of said section, and as Willie Martin could not be convicted for failure to register as required in Section one, he therefore on a fair statement of the case and the reading of said Section 8, could not be convicted of violation thereof.

We therefore contend that the Judge of District Court in the case at bar,

*United States vs. Jim Fuey Moy,* 225 Fed., 1003,

correctly construed said act when he said:

"In reading the eighth section in connection with remaining sections of the Act of Congress, when it provides that it shall be unlawful for any person not registered under the provisions of this Act, to have in his possession certain drugs, I think the word *'person'* should be *held to refer to the per-*

*sons with whom the Act of Congress is dealing;* that is, the persons who are required to register and pay the special tax in order to import, produce, manufacture, deal in, dispense, sell, or distribute. And there is no allegation in the indictment that Martin had in his possession these drugs for any of these purposes." (R. 15.) [Italics ours.]

In arriving at the intention we must consider the subject matter of the Act, which we believe is fully expressed in its title:

> "An Act to *provide for the registration* of, with collectors of internal revenue, and *to impose a special tax* upon all persons *who produce, import, manufacture,* compound, deal in, dispense, sell, distribute, or give away opium, or coca leaves, their salts, derivatives or preparations, and for other purposes."

The reader will look in vain for the "other purposes" as none except revenue are expressed or can reasonably be implied. Aside from cases cited in plaintiff's brief, we find a clear construction of Act of Parliament where there was a confusion as to "persons" to whom it referred in the case of

*Martin vs. Ford,* 1 Term Report, 101 (1793),

where Lord Kenyon, Chief Justice, said:

> "We must collect from the whole context of the act whether the clause in which this penalty is in-

flicted were meant to *extend to a person in the* defendant's situation.

"The Act itself professes to be an Act for the Establishment of the Post Office, and there are words at the end of the clause creating the forfeiture which shows that the legislature intended to restrain the operation of the general words, 'no person or persons,' to those employed by the Post Office, for it proceeds to enact that 'over and above such penalty as aforesaid *every such person* so offending as aforesaid shall be forever incapable of using, exercising or enjoying any office, trust or employment in or relating to the Post Office or any branch thereof.' But the defendant had no employment under the Post Office, he was merely a messenger employed by the inhabitants of Beckington for their convenience. The plaintiff's argument would extend the clause to all private gentlemen's servants, who were sent to Post Office for their master's letters.

"But considering the general purpose of the Act, the particular expression in the clause on which this action is brought, I think the penalty can only attach on those *persons employed in the Post Office* who in violation of their public duty, wilfully detain letters." (Italics ours.)

The defendant not being a person having a duty laid upon him not to open or detain letters, by virtue of statute invoked, verdict was directed in his favor.

It will further be observed that said section eight repeats the provisos of previous sections and states sev-

eral exemptions which is additional proof that it is dealing with the same subject matter, to-wit: failure of required persons to register and pay the tax.

This section, to have any purpose other than a statutory rule of evidence, can only be to make further provisions to prevent the required persons who should pay the tax from possessing or controlling said prescribed drugs, whereby they might be tempted to sell, import, dispense, etc. without having paid the tax, or in other words it seeks to create presumption of law that possession by that class of persons named in Section one, is for the purpose of sale, importation, distribution, etc.

*There is no basis for argument that said words shall be construed to mean "every other person"*:

> "Persons who can not bring themselves within the scheme (set up and protected by the prior sections) of registration, order forms, prescriptions formally made, and regular dealings in interstate commerce; persons who are outside of this record of the production, transportation and use of drugs are not permitted to have possession of them at all." (Page 11 of Plaintiff's Brief.)

We can find no authority for this position outside the language of the Court in the case of

*United States vs. Brown,* 224 Fed., 135,

upon which counsel for plaintiff does not seem to rely, and for good and sufficient reasons fundamental to modern law which we shall hereafter discuss.

The difference between "any" in the statute and "every" in the interpretation justifies a conclusion other than that adopted by the Government.

III. SECTION EIGHT OF SAID ACT IS ONLY INTENDED "TO CREATE A STATUTORY RULE OF EVIDENCE.

Said section provides, *inter alia*:

> "And such possession or control shall be presumptive evidence of a violation of this section, and also a violation of the provision of Section one of this act: * * * (here follows exemptions in favor of certain persons) * * * Provided further, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the defendant."

It will hardly be contended with any one acquainted with the trend of modern form of legislative enactment in taking from the Courts the power to construe the meaning of a particular Act, by inserting as a part of such acts rules of evidence as well as definitions or rules for construction, that this particular section is a full blown example of that species.

We believe that the Court in

*United States vs. Woods,* 224 Fed., 278, 280,

rightly held that section eight was,—

"only to make unlawful mere possession of the drugs

by any person of the classes by Section one required to register and pay and *who have not* and *to create* a *statutory rule of evidence.*" (Italics ours.)

We therefore contend that that is the office of said section eight, though under old forms for framing of statutes an irrelevant one.

(a) *It is only auxiliary to Section 1.*

A careful examination of said section and its coupling its punishment with that of Section 1, clearly indicates the legislative intent that the one is auxiliary or complimentary to the other and not logically an independent section, but a "sort of a clincher" for said Section one, and a method of "heading off" of persons liable thereunder by closing all possible avenues of escape from penalties for violations of preceding sections.

(b) *It does not enlarge the class of unlawful acts such as punishing a mere possessor, who may have obtained said drugs lawfully prior to passage of said act or since.*

Under the indictment as laid in the case at bar if Willie Martin found said drug on the public highway and had taken it into his possession, he would still be guilty of crime alleged, because he was not registered and if he should seek to register to legitimatize his possession he would have found it impossible, because he was not within class mentioned in Section One of the Act.

Had Congress intended to visit said penalties on such accidental possessor, apt words would have been incorporated to enlarge the class of persons required to register.

Or had Congress thought wise to include all possessors regardless of date of entry into possession, the Commissioner of Internal Revenue under authority vested in him by said Act would have required statement or inventory of every person who at time the Act took effect had under his control any of the prescribed drugs.

## IV. Presumed crime cannot be basis of valid legislation.

In the case of

*United States vs. Brown*, 224, Fed., 135,

the Court said that as opium was an "Outlaw of Commerce," no one could legally possess it, except as they came within the provisions or under the protection of the Harrison Drug Act; leaving out of account altogether the fact of innocent possession such as finding or otherwise receiving from a person, such receiver or possessor to have been duly registered and to have paid the tax, but directing a conviction without proof of actual unlawful possession, or possession with intent to handle or otherwise dispose of it.

If the Court's position were correct innumerable people might be presumed to be guilty under this Act.

and the door of proof of innocence barred against them by the very terms of the Act, before there was any proof in fact, or inference of unlawful intent to commit a crime.

The innocent possession here contended for in no way borders on destruction of intent to limit to the possession and use of said drugs for medicinal purposes.

V. SAID ACT WAS NOT PASSED PURSUANT TO TREATY OBLIGATION OR UNDER POWER OF CONGRESS TO REGULATE COMMERCE.

It will be observed that Congress had already regulated the traffic in these drugs in commerce by the Act of February 9, 1909; 35 Stat., 614, and amended by the Act of January 17, 1914, ch. 9, 38 Stat., 275, with the one exception of regulation in Consular Districts in China, provided by Act of March 3, 1915, 38 Stat., 817, and the Harrison Drug Act only effected Interstate Commerce by providing:

> "SECTION 4. That it shall be unlawful for any person who shall *not have registered and paid the special tax* as required by *Section One* of this Act to send, ship, carry or deliver any of the aforesaid drugs from any State, or Territory of the District of Columbia, or any insular possession of the United States, to any person in any other state," etc.

This Section was thus only a regulation in aid of revenue provided in the Act; and the words "send," "ship," "carry" or "deliver" were well within the terms "deal in, dispense, sell, distribute or give away" and do not create a new class of registered persons, but refers to class created by Section One, and the whole purpose is not to enact something additional, but an attempt to make more certain that which was already sure.

(a) *The Portale case does not furnish a rule of interpretation for the Act in question.*

Justice Holmes in that case,

*United States vs. Portale,* 235 U. S., 27,

said:

> "The requirement is that, every person, harboring a woman as above shall file the statement. *It is and purports to be in furtherance of an international agreement.*
>
> That agreement among other things is to procure, within the limits of the law, all information of a nature to *discover a criminal traffic.*" (Italics ours)

The international agreement was with Great Britain; the woman harbored was from Great Britain; Congress had adhered to said agreement; and further had passed Act of 1910, relating to "White Slave Trade"; white slave trade has been held to be commerce; the information wanted, and the failure of which to furnish constituted the crime alleged, was

such as provided for in said international agreement and material to the regulation of traffic or commerce: and therefore eminently proper to require, and well within the Powers of Congress to demand, and adequately punish a neglect or refusal of said lawful demand.

VI. SAID ACT IS A REVENUE ACT AND CANNOT APPLY BY CONSTRUCTION TO A CLASS OF PERSONS WHO ARE NOT PERMITTED TO COMPLY THEREWITH, OR OTHERWISE EFFECT THE REVENUE, BUT IT IS LIMITED IN SCOPE TO:

(a) *Requiring persons specified to register and pay the tax imposed.*

The learned Judge of the District Court has so well said:

> "The first section of the act requires all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, *shall register and pay an annual tax* of $1 to the Government.
>
> "The act also makes it unlawful for *any person required* to register under the terms of the act, to produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away any of the aforesaid drugs, *without having registered and paid the special tax.*" (R. 14.) [Italics ours.]

By virtue of this section upwards of $200,000 are added to Internal Revenue annually, so that the Act is

a real producer of revenue. The Court below therefore rightly held:

"This is a revenue act." (R. 13.)

(b) *Requiring the use of official order forms upon which a tax is imposed.*

Judge Thompson in said opinion filed further said:

"The second section makes it unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order, * * * on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue." (R. 14.)

The Act further provides:

"Such forms shall be sold by collectors only to persons who have registered and paid the tax, and the price shall not exceed $1 per hundred." (Page 23 of Plaintiff's Brief.)

That too amounts to a species of a tax and results in many thousands of dollars being added annually to national revenues.

(c) *Requiring a record to be kept and other provisions complied with to prevent evasion of the tax, or to aid in detection and proof of violations of the Act.*

These provisions, stipulations and regulations are not in vary much from the ordinary rules and practices

of the Treasury Department, laid down for the purpose of rendering more certain and complete the collection of revenues authorized to be collected.

(d) *Regulates said drugs in interstate commerce.*

This is only the exercise of power of Congress duly conferred and the insertion in this Act was doubtless intended to make this Act *as written* express the whole intent of legislative enactment as to the prescribed drugs.

## VII. Said Act must be so construed as not to violate the Constitution, if possible.

(a) It is a Revenue Act and in so far as it is, it does not violate the Constitution.

We submit that the opinion of the District Judge is eminently correct where he said:

> "This is a revenue act and unless it is such, save as to those provisions which relate to the transportation of drugs in interstate commerce, it would perhaps violate the Constitution of the United States." (R. 13.)

The title of the Act sets forth *inter alia*: "to impose a special tax upon all persons who produce, etc." and

"the title of an Act constitutes a part of it, though only a formal part," as was held by Justice Field in

*Hadden vs. Collector,* 72 U. S., 107, 110.

The decision in the case just referred to bears hard on plaintiff's contentions that:

> "The construction given the Act by the Court below does not merely weaken greatly the beneficial operation of the statute. It leaves the matter in a worse plight than before the Act was passed. If *persons who are not conducting a lawful business* in the drugs and cannot therefore register are permitted to have lawful possession of the drugs, the traffic in them will inevitably be diverted from reputable physicians and druggists to the infamous class of persons who for gain are willing to pander to one of the most lamentable and miserable weaknesses of human nature: *Such* an intent on the part of Congress should not be presumed. The statute should be given a construction in accordance with its plain language and so as *to carry out beneficially* its clear intent." (Italics ours). (Page 15 of Plaintiff's Brief).

May we ask what "beneficial intent" other than revenue can Congress have in this alleged restriction and by virtue of what power does the Constitution so invest Congress? The "clear intent" must be drawn from examination of this statute and its related enactments by the careful scrutiny of a counsellor, rather by zealous oratory of a social reformer.

It will not satisfy the demands of a constitutional government to say that this or that construction is the "beneficial intent" or policy of the government or reason of its enactment, as has been so well said by Justice Field in

*Hadden vs. Collector (supra)*,

page 111:

> "What is termed the policy of the government is on the part of the Legislature to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons.
>
> "It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes."

Counsel for defendant have never contended nor did the Court below construe: that "persons who are not *conducting* a *lawful business* in the drugs and cannot therefore register" are not within the provisions and subject to requirements and penalties of said Act; but on the other hand we freely acknowledge, that "conducting a business" lawful or unlawful, or having a "traffic in them" (the prescribed drugs), renders such "persons" whether "infamous" or otherwise, immediately amenable to requirements and penalties of said Harrison Drug Act.

(b) TO CONSTRUE SAID ACT AS A POLICE REGULATION TO SUPPRESS THE TRAFFIC IN OPIUM WITHIN THE SEVERAL STATES, IS TO RENDER SAID ACT UNCONSTITUTIONAL.

This proposition is supported by the authority of the decision of this Court in

*United States vs. DeWitt,* 76 U. S., 41, 44,

where Chief Justice Chase said:

> "There was no allegation that the sale was in violation or evasion of any tax imposed on property sold," but that the sale alleged was contrary to Act of Congress of Mar. 2, 1867, providing that "any person who shall mix for sale, keep for, offer or sell any oil made from petroleum of fire test less than 110 degrees Fahrenheit, shall be guilty of a misdemeanor, etc.
>
> "While it is contended that the prohibitions mentioned in the indictment 'was in aid and support of internal revenue tax imposed on other illuminating oils.' In the case 'before us no tax is imposed on oils the sale of which is prohibited. Standing by itself it is plainly a regulation of police," and as such regulation 'relating exclusively to the internal trade of the States it can only have effect where the legislative authority of Congress excludes territorially all state legislation, as for example in the District of Columbia. Within the State limits it (said Act of Congress) can have no constitutional operation."

(c) *The presumption is against unwarranted exercise of legislative authority.*

Justice Story in

*Parsons vs. Bedford,* 28, U. S., 432, 448,

said:

> "No Court ought, unless the terms of an Act of Congress render it unavoidable, to give a construction to it, which would involve a violation however unintentional of the Constitution. The terms of present acts may well be satisfied by limiting its operation to the modes and practices and proceedings in the Court below."

This Court, in the decision written by Justice Harlan in

*Grenada County Supervisors vs. Brogden,* 112 U. S., 261, 269,

said:

> "Our duty therefore is to adopt that construction in which without doing violence to the fair meaning of the words used brings the statute into harmony with the provisions of the Constitution."

We therefore finally contend that "the terms of present act may well be satisfied by limiting its operation" to interstate commerce and those persons required to register and pay the tax.

VIII. Resume of Brief of Plaintiff in Error.

(a) The construction of the first six sections of said Act as contended by plaintiff is not now in dispute.

(b) Seeks to amend Act by Construction (page 10 of Plaintiff's Brief).

(1) By adding additional purposes, such as safeguarding the use of said drugs, which is fully answered on pages 7 to 9 of this Brief, and

(2) Including "other persons" (page 11 of Plaintiff's Brief). Defendant's explanation, pages 13 and 15 *supra.*

(c) Set up an intention of Congress different from the plain meaning of words used (page 16) of Plaintiff's Brief. This is rebutted by defendant on page 22, *supra.*

(d) Makes a presumption of "no legitimate occasion for the possession of said drugs" (page 13 of Plaintiff's Brief).

Because a person "possesses or controls" who has not registered and who cannot register, a penalty is to be inflicted for failure to register (page 15 of Plaintiff's Brief). This position is legally untenable as set forth on pages 12 and 13 *supra.*

(e) The Partale case is not at all similar to the case at bar, as legislative authority there relied upon was founded on international agreement, as set forth on page 18, *supra.*

(f) Tries to introduce into modern jurisprudence the ancient and dishonored custom of outlawry (see page 17 of Plaintiff's Brief).

Thus making any person who might innocently possess or have within his control more than two grains of opium a criminal, unless he simultaneously had in his possession the written order or prescription referred to in said Act, or belonged to class of persons who could and personally did register, without requiring proof of unlawful intent, illegal act or purpose, as set forth in pages 7 to 10, *supra.*

(g) It will be conceded that if Section 8 is itself a penal statute as contended by the Plaintiff in Error, then it must be strictly construed, as was said by Justice Story in

*Andrew vs. United States,* 2 Story, 203, 213:

"The general rule universally recognized is that penal statutes are to be construed strictly. They are never extended by implication."

We would therefore submit, that as Plaintiff in Error must, to maintain its position, extend the class of persons to be included under the provisions of said Act, and also render it a penal statute, it would be limited to a strict construction, while even a fair interpretation of said Harrison Drug Act would legally warrant the quashing of said indictment; consequently the judgment of the District Court should be affirmed.

WILLIAM STRITE MCDOWELL.

Supreme Court, U. S.
FILED
DEC 6 1915
JAMES D. MAHER
CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

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## No. 525.

---

THE UNITED STATES, PLAINTIFF IN ERROR,

*vs.*

JIN FUEY MOY.

---

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

---

## BRIEF FOR THE DEFENDANT.

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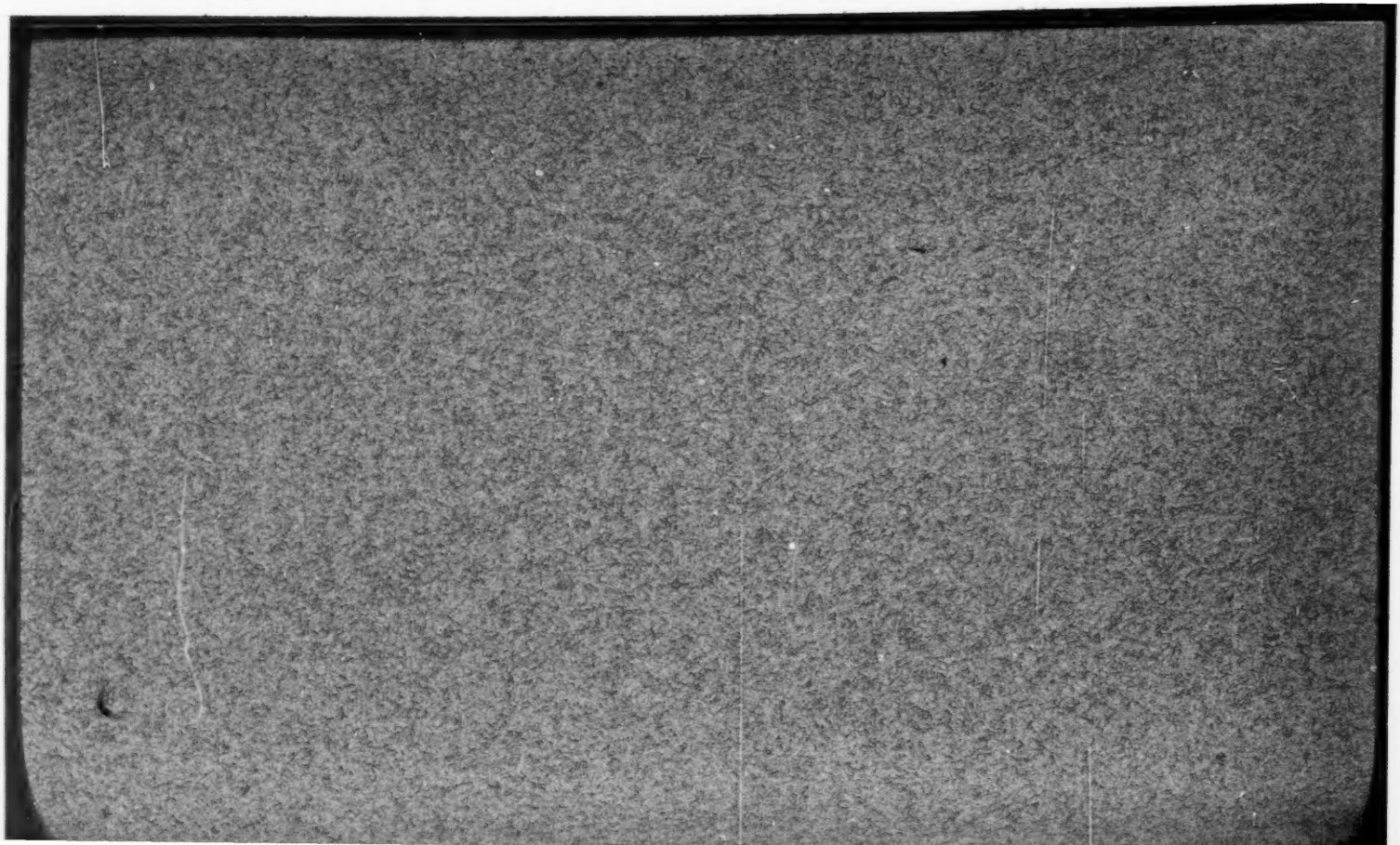
H. RALPH BURTON,
*Attorney for Defendant.*

GEORGE X. McLANAHAN,
*Of Counsel.*

DECEMBER, 1915.



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## BRIEF FOR THE DEFENDANT.

### Statement of the Case.

The defendant was indicted for conspiring with one Willie Martin to violate section 8 of the act of December 17, 1914 (38 Stat. L., 785), known as the Harrison act, to have opium in the possession and under the control of Martin, Martin not then being registered or having paid the special tax required by said act. It was not alleged in the indict-

1y

ment that Martin sold or intended to sell opium, but expressly charged that he was a consumer (R., p. 2).

The defendant filed a motion to quash the indictment, which motion was granted, and the Government brings the case to this court on a writ of error.

The court below said (R., p. 15):

> "In reading the eighth section in connection with the remaining sections of the act of Congress, when it provides that it shall be unlawful for any person not registered under the provisions of this act to have in his possession certain drugs, *I think that the word 'person' should be held to refer to the persons with whom the act of Congress is dealing; that is, the persons who are required to register and pay the special tax in order to import, produce, manufacture, deal in, dispense, sell, or distribute. And there is no allegation in the indictment that Martin had in his possession these drugs for any of these purposes.*
>
> "The indictment, therefore, could not be sustained, unless the mere fact of having the drug in his possession is a violation of the law. If so, any person would be presumptively guilty and subject to indictment and have the burden of proof cast upon him under this section, if he had any small amount of the prescribed drug in his possession, without any reference to the purpose for which it was to be used, whether legitimate or otherwise.
>
> "On account of the view which the court entertains as to the scope of the act of Congress, the motion to quash the indictment is sustained, and a general exception is noted to the Government, and they will be given any special exceptions that may be desired." [Italics ours.]

The Government in its brief attempts to show that the court below erred in its construction of the word "person" as used in section eight of the act.

## ARGUMENT.

### Construction of the Act.

Section 8 provides in part:

> "That it shall be unlawful for any person *not registered under the provisions of this act, and who has not paid the special tax provided for by this act,* to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, *and also of a violation of the provisions of section one of this act.*" [Italics ours.]

Section 1 of the act provides:

> "That on and after the first day of March, nineteen hundred and fifteen, *every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof,* shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on: *Provided,* That the office, or if none, then the residence of any person shall be considered for the purposes of this act to be his place of business. At the time of such registry and on or before the first day of July, annually thereafter, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs shall pay to the said collector a special tax at the rate of $1 per annum." [Italics ours.]

After making further provisions the section states:

> "It shall be unlawful for any person *required to register* under the terms of this act to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section." [Italics ours.]

Who, then, can violate section 1? By the language of the section itself *only those who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away the specified drugs.*

What is a violation by one in this category? Clearly it is one of three things:

1. That such person did not register as required;

2. That such person did not pay the special tax provided;

3. That such person produced, imported, manufactured, or gave away, the specified drugs without having registered and paid the tax provided.

What, therefore, is the logical conclusion in the construction of section eight with respect to the words *"and also of a violation of the provisions of section one of this act?"*

It is, with mathematical definiteness, that the violation must be by one of a class mentioned in section 1, who was required to register and pay the tax, but who failed to do one or both, and who had in his possession one or more of the specified drugs. Following this reasoning it is clear that by the preceding sections Congress intended to control those who were actually dealing in or shipping the specified drugs, and by section 8 those who had in their possession the specified drugs *with the intention* of dispensing, selling, distributing, or giving them away without compliance with the taxing law.

Unless a person comes within the category described in section 1, it would not be possible either to register or to pay the tax. The act does not provide for a tax upon the ultimate consumer or upon any person who has in his possession one of the specified drugs except those who produce, dispense, and the like, and unless such a tax is imposed and not paid, Congress could not make mere possession by citizens of the various States a crime.

If the construction of section 8 is that which the Government maintains, then any individual having the specified drugs in his possession, under circumstances not subjecting

him to registration and payment of tax, in any State of the Union, might be readily indicted for an offense against the United States and have placed upon him the burden and expense of exoneration, because section eight of the act provides that *the mere possession or control of any of said drugs shall be presumptive evidence of a violation of the section and that it shall not be necessary to negative any of the exemptions in a writ brought under the act and the burden of proof of such exemption shall be upon the defendant.* This would be preposterous. It is useless to say that the individual would probably not be indicted. He could be and that is sufficient.

Statutes should receive a sensible construction to avoid an absurd conclusion. (*Lau Ow Bew vs. United States*, 144 U. S., 47).

The construction placed upon section 8 by the lower court in this case is the same as that given in the cases of *United States vs. Woods*, 224 Fed., 278, and *United States vs. Wilson*, 225 Fed., 82.

**Statutory Construction.**

It is a rule of statutory construction that if the meaning of the statute is doubtful the title of the act, if expressive, may have the effect to resolve the doubts, and is therefore entitled to consideration.

*United States vs. Fisher*, 2 Cranch, 358, p. 386.

Such being the case, let us see what light the title of the Harrison act throws upon its construction. The title is:

> "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes."

The words "for other purposes" are held to express no specific purpose and are not to be considered in construing the title.

Sutherland, Statutory Construction, 2d ed., sec. 122.

In the case of *United States vs. Palmer,* 3 Wheat., 610, 631, this court said:

> "The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also those objects to which the legislature intended to apply them. Did the legislature intend to apply these words to the subjects of a foreign power, who in a foreign ship may commit murder or robbery on the high seas?
>
> "The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature. The title of this act is, 'An act for the punishment of certain crimes against the United States.' It would seem that offenses against the United States, not offenses against the human race, were the crimes which the legislature intended by this law to punish.
>
> "The act proceeds upon this idea, and uses general terms in this limited sense. In describing those who may commit misprision of treason or felony, the words used are 'any person or persons;' yet these words are necessarily confined to any person or persons owing permanent or temporary allegiance to the United States."

Applying the reasoning of the court in the Palmer case to the case at bar, it must be evident that the act deals with the registration and payment of the special tax by those who produce, import, etc., the drugs named, and that the words in section 8 are limited accordingly.

In *United States vs. Shelley,* 229 U. S., 239, the court was called upon to consider whether the reconversion of the residuum of opium, after smoking, into a form fit for re-

smoking was in violation of section 36 of the act of Congress approved October 1, 1890 (chap. 1244, 26 Stat. L., 567). The court said (p. 243):

> "But, aside from the general principle that criminal statutes ought not to be extended by construction, we have here the additional consideration that this statute was primarily designed as a taxing act. * * * Of course the prohibition is not more extensive than the taxing clause. * * *"

This, we contend, exactly applies to the case at bar. The taxing clause in section 1 relates entirely to persons who produce, import, etc., certain drugs, and the prohibition in section 8 cannot be more extensive than the language of section 1.

Counsel for the Government argue at length for a construction of the phrase "any person" in section 8 which will make it broader than the class defined in section 1. In support thereof they refer to the "comprehensive scheme of legislation regulating the traffic in and use of opium," etc. With all respect, it is contended that they attempt to confuse the premises and limitations of the question presented here under the taxing power of Congress. An illustration of this is found in the discussion of section 4. This section, however it should be construed or treated if an indictment were before this court charging its violation, affects a class within the description of section 1, since shipping in interstate commerce involves distribution, at least; and the section in any event deals by express terms with interstate commerce.

**The Construction Sought by the Government Would Be Unconstitutional.**

Where a statute is susceptible of two constructions, one of which will make it valid or constitutional, and the other of which will make it invalid or unconstitutional, that construction will be adopted which will make it valid or constitutional.

To construe the words "any person" in section 8 as is contended for by the United States would be to invade the private rights of citizens of the States entirely within the jurisdiction of the State and would accordingly be unconstitutional.

In *United States vs. De Witt*, 9 Wall., 41, this court considered the Internal Revenue act of March 2, 1867 (14 Stat. at L., 484), which imposed a penalty upon any person who should mix for sale naphtha and illuminating oils, or who should knowingly sell or keep for sale, or offer for sale, such mixture, or who should sell or offer for sale oil made from petroleum for illuminating purposes, inflammable at less temperature or fire test than 110 degrees Fahrenheit.

The court said:

> "As a police regulation, relating exclusively to the internal trade of the States, it can only have effect where the legislative authority of Congress excludes, territorially, all State legislation, as, for example, in the District of Columbia. Within State limits, it can have no constitutional operation. This has been so frequently declared by this court, results so obviously from the terms of the Constitution, and has been so fully explained and supported on former occasions (License cases, 5 How., 504; Passenger cases, 7 How., 283; License Tax cases, 5 Wall., 470 [72 U. S. XVIII, 500]; and the cases cited), that we think it unnecessary to enter again upon the discussion."

The question of this police power was also discussed in the case of *Keller vs. United States*, 213 U. S., 138, in construing section 3 of the act of February 20, 1907 (34 Stat. L., 898, 899), which section reads in part as follows:

> "Whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony. * * *"

Congress was held not to have the power to enact the foregoing provision, because jurisdiction over such an offense comes within the accepted definition of the police power, of which there is in the Constitution no grant to Congress.

It would not be reasonable to suppose that Congress in its wisdom would have deliberately placed upon the statute books a law the unconstitutionality of which was apparent. Unless a revenue tax is provided for the mere possession of these drugs by citizens of the various States, it does not lie within the powers of Congress to prohibit such possession, and not then if the tax is paid. We have already pointed out that there is not a tax imposed by the statute for such possession (*supra*, p. 4).

**Scope of Review.**

The plaintiff in error contends that the decision of the court below goes only on the construction and not at all on the invalidity of the act (Brief, p. 18), and that therefore the case is within the rule established in *United States vs. Keitel*, 211 U. S., 370, that the question of construction is the only one open on this writ of error.

It is true that in *United States vs. Keitel*, 211 U. S., 370, and numerous cases following that decision, the court did limit itself to the question of the construction of the statute, but in these cases it was endeavored, either by the United States or by the defendant, to have the court pass upon the sufficiency of the indictment, and like questions, concerning which the Supreme Court found no jurisdiction under the act of 1907.

In *United States vs. Portale*, 235 U. S., p. 31, the court said that the only question brought up was the construction of the act, but it does not appear from a reading of the opinion of the court below that the constitutionality of the act in that case (sec. 6 of the act of June 25, 1910) was questioned; on the contrary the district court said:

> "But we do not intend by this to express the view that section 6 of the act of June 25, 1910, is void under the ruling in the Keller case, *but quite to the contrary.*" (Italics ours.)

This at once takes out of the Portale case a consideration of the constitutionality of that act.

In the case at bar the lower court referred to the possible unconstitutionality or invalidity of the act:

> "This is a revenue act, and unless it is such, save as to those provisions which relate to the transportation of drugs in interstate commerce, it would perhaps violate the provisions of the Constitution of the United States" (R., p. 13).

The act of March 2, 1907, clearly does not give to the Supreme Court jurisdiction to review the whole case, but it does confer jurisdiction to pass upon the *invalidity* or *construction* of the statute.

The contention of the plaintiff in error is that the court should give to the statute a construction which would make it unconstitutional, as invading the police powers of the State, by regulating or attempting to regulate a private citizen within the bounds of a State, but that the question of the constitutionality of such a construction cannot be considered. The court, however, could hardly be expected to construe the statute in such a way that it would be unconstitutional, and then refuse to consider that question.

It is not contended by the defendant that the statute is unconstitutional, for that question is not necessary to a decision of the case in the construction placed by the court below upon the words "every person" in section 8, but it is contended that to give the construction sought by the Government would make the statute unconstitutional.

**United States vs. Portale Distinguished.**

The plaintiff's brief relies upon the case of *United States vs. Portale*, 235 U. S., 27, to sustain the construction which it gives to the words "any person" in section 8. A comparison of the language, however, reveals very readily a distinction. The act involved was a commerce act, an act in supplement of a treaty, and expressly dealt with all classes. The purpose of section 6 of the act of June 25, 1910 (involved in the Portale case), as stated in the act itself, was to carry out the terms of a treaty for the suppression of the white slave traffic, and to require the furnishing of information in pursuance of, or for use as provided in, that treaty, and it might well be that persons who had not imported such alien women would, within three years after such women entered the country, and after they had terminated their relations with the persons who had to do with bringing them into the United States, acquire knowledge of acts of prostitution which would bring them within the statute.

The act of June 25, 1910, furthermore, merely uses the words "every person" without qualification, whereas the Harrison act, in section 8, says "any person not registered under the provisions of this act, and who has not paid the special tax provided for by this act," and, as already pointed out (*supra*, p. 4), the only persons who could register and pay the tax were those who produced, etc.

The situation in the present case is more analogous to the Keller case, *supra*, wherein it was held that such part of section 3 of the act of February 20, 1907, as related to harboring alien prostitutes within a State, was unconstitutional.

**Conclusion.**

The words "any person" in section 8 can apply only to the persons required by section 1 to register and pay the special tax, and the ruling of the court below was correct.

It is respectfully submitted that the judgment should be affirmed.

H. RALPH BURTON,
*Attorney for Defendant.*

GEORGE X. McLANAHAN,
*Of Counsel.*

DECEMBER, 1915.

Office Supreme Court, U. S.
FILED
DEC 8 1915
JAMES D. MAHER
CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1915.**

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## No. 525.

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*vs.*

JIN FUEY MOY.

---

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.**

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# Reply Brief for Defendant in Error.

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H. RALPH BURTON,
*Attorney for Defendant.*

GEORGE X. McLANAHAN,
*Of Counsel.*

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## REPLY BRIEF FOR DEFENDANT IN ERROR.

The Government, for the first time in its reply brief and on argument, suggested the bearing of the International Opium Convention, *39 Statutes, 1929*, upon the question in issue.

Undersigned counsel did not argue this question on brief for the defendant in error because it was not raised by the Government either below or in this court until the reply brief was filed.

**The Opium Convention Does Not Change the Case.**

A convention or treaty is of no superior efficacy to a law of Congress. Each is equally the supreme law of the land (*Whitney vs. Robertson*, 124 U. S., 190-194), subject, however, to all the limitations of the Constitution. *Holmes vs. Jennison*, 14 Peters, 540-569; *Holden vs. Joy*, 17 Wall., 211-243; *United States vs. Lariviere* (43 Gals. Whiskey), 3 Otto, 188; *Johnson vs. Geralds*, 234 U. S., 422.

If section 8 of the act of Congress, giving it the construction that it regulates possession for consumption and not for sale or dispensing in evasion of tax, is an invalid exercise of power by Congress, and it is urged that it must be so held, then no treaty provision can grant to Congress power to pass such an act of police regulation.

**Opium Importation Law is Not Material, and Congress Has Not Attempted Any Pursuit of Opium to Ascertain its Uses; on the Contrary, it Taxes Opium Manufactured for Smoking.**

[The Opium Importation Act and the Act Regulating the Manufacture of Smoking Opium in the United States are printed as Appendix A and Appendix B to this brief for convenience in reference.]

The act of Congress of January 17, 1914, (one of the system of laws following the Opium Convention), forbidding the importation of opium for smoking purposes is not material. It does not enable or authorize Congress to pursue drugs within the States to ascertain their ultimate use.

*Keller vs. United States*, 213 U. S., 138.

Congress did not so intend or attempt to legislate, as evidenced by the terms of another act of Congress of the same

date, January 17, 1914 (the second of the system of laws on the subject), which instead of prohibiting the internal manufacture of smoking opium from imported opium, or attempting to regulate the ultimate use by prohibiting the smoking of opium, expressly taxes the manufacture of smoking opium within the United States at the rate of $300 per pound. It is immaterial whether or not the tax was intended to be prohibitory on manufacture of smoking opium; Congress realized that it had no police power, and attempted to exert only its taxing power.

**Coca Leaves and Cocaine Not Forbidden Importation, but are Included in Harrison Act.**

It is necessary further only to point out that the Opium Importation Act cannot add to or take from the Harrison Narcotic Tax Act, because the latter taxes the trade in opium and its derivatives, and also the trade in coca leaves, cocaine, and their derivatives. To give the Harrison Act a forced inquisitorial and policing operation with regard to possession and consumption of opium and its derivatives, by virtue of the Opium Importation Act, which it could not possibly have with respect to other narcotics the trade in which is also taxed by the Harrison Act, would be to accomplish what Congress had no intention of enacting.

The Harrison Act contains no apt language to define and punish offenses of wrongful possession and use of opium in connection with the Importation Act. In any event this question is not before the court on any charge in this record, and cannot come before the court until Congress enacts a law specifically upon the subject, properly drawn as a penal statute. In that event it is submitted that the Keller case, *supra*, would cover the question.

**The Exemptions in Section 8.**

On the point as to the exemptions in section 8, elaborated by the Government on its reply brief, it is respectfully submitted as follows:

The Government argues from the proviso of section 8 that the exemptions disclose legislative intention to include others than those classified in section 1. They overlook the fact that Congress was dealing in section 8 with any person not registered having possession, and such person to be within the taxing provision of the act must of necessity be one having possession and intending to manufacture or distribute *in futuro* in evasion of the tax. This is shown by the fact that Congress expressly exempted persons such as employees of registered persons, nurses acting under supervision, officials, warehousemen, and common carriers, already largely exempted in section 1; *i. e.*, persons whose function necessarily would be *further distribution* of drugs properly possessed or held for that purpose under employment or authorization of registered persons. To point more explicitly the impropriety of arguing from exemptions to broaden the scope of the enactment in sections 1 and 8 taken together, it is necessary to refer only to the further exemption in section 8 of those possessing drugs prescribed "in good faith" by a registered physician, veterinary or dentist. *Section 2, paragraph b*, has already exempted from order blank requirement distribution by a dealer *"to a consumer under and in pursuance of a written prescription,"* etc. Possession "in good faith" under a physician's prescription must be possession "for consumption" mentioned in section 2, paragraph *b*, and not for the purpose of manufacture, sale, distribution, etc., by the possessor without registration and payment of tax; *i. e.*, in evasion of the taxing purpose of this law. The reason for including the last-mentioned exemption would be, under the theory of the taxing law, to save the harassment of prosecution upon mere possession under a

prescription and to point clearly the limit of the entire section 8 to constitutional bounds. A holder under a prescription intending to resell the product without registration, tax-payment and order forms is within the section; a holder for consumption is not.

Counsel for the Government in their effort to read into this taxing act an exertion of police power by Congress alien to the taxing function and alien to the Constitution have failed to discover that section 1 taxes present distribution of the specified drugs, and that section 8 is auxiliary thereto in forbidding possession for future distribution by those not registered under section 1. Construed thus, section 8 is properly in this law; construed as counsel for the Government contend, the section is unconstitutional. But to indict for violation of section 8 on its valid construction, the Government must allege possession without registration and payment of tax with intent to distribute and not merely for consumption by the possessor.

**Conclusion.**

On the whole case it is respectfully submitted that the question is controlled by the decision of this court in the cases of De Witt, *9 Wall., 41*, and Keller, *213 U. S., 138;* that the decision of the lower court in this case and of the district courts in the case of *United States vs. Wilson*, 225 Fed., 82, and *United States vs. Woods*, 224 Fed., 278, are correct. It is further submitted that the decision of the District Court for the Western District of Washington in the case of United States *vs.* Brown proceeded upon an erroneous confusion of the bearing of the law prohibiting the importation of opium for smoking purposes, the law of Congress taxing smoking opium at three hundred dollars per pound when manufactured in the United States and the proper bearing of this law taxing the distribution of the specified drugs.

Counsel are not familiar with the unreported cases decided by District Judge Landis in the Northern District of Illinois and District Judge Ray in the Northern District of New York.

Respectfully submitted,

H. RALPH BURTON,
*Attorney for Defendant.*

GEORGE X. McLANAHAN,
*Of Counsel.*

DECEMBER, 1915.

## APPENDIX A.

### Opium Importation Act.

[PUBLIC—No. 46—63D CONGRESS.]

[H. R. 1966.]

**An Act To amend an Act entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes," approved February ninth, nineteen hundred and nine.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That an Act entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes," approved February ninth, nineteen hundred and nine, is hereby amended so as to read as follows:

"That after the first day of April, nineteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof: *Provided,* That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law.

"SEC. 2. That if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be fined in any sum not exceeding $5,000 nor less than $50 or by imprisonment for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to au-

thorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.

"SEC. 3. That on and after July first, nineteen hundred and thirteen, all smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported after the first day of April, nineteen hundred and nine, and the burden of proof shall be on the claimant or the accused to rebut such presumption.

"SEC. 4. That any person subject to the jurisdiction of the United States who shall, either as principal or as accessory, receive or have in his possession, or conceal on board of or transport on any foreign or domestic vessel or other water craft or railroad car or other vehicle destined to or bound from the United States or any possession thereof, any smoking opium or opium prepared for smoking, or who, having knowledge of the presence in or on any such vessel, water craft, or vehicle of such article, shall not report the same to the principal officer thereof, shall be subject to the penalty provided in section two of this Act. Whenever on trial for violation of this section the defendant is shown to have or to have had possession of such opium, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury: *Provided, however,* That any master of a vessel or other water craft, or person in charge of a railroad car or other vehicle, shall not be liable under this section if he shall satisfy the jury that he had no knowledge and used due diligence to prevent the presence of such article in or on such vessel, water craft, car, or other vessel, and any such article shall be forfeited and shall be destroyed.

"SEC. 5. That no smoking opium or opium prepared for smoking shall be admitted into the United States, or into any territory under the control or jurisdiction thereof, for transportation to another country, nor shall such opium be transferred or transshipped from one vessel to another vessel within any waters of the United States for immediate exportation or any other purpose.

"SEC. 6. That hereafter it shall be unlawful for any person subject to the jurisdiction of the United States to export or cause to be exported from the United States, or from territory under its control or jurisdiction, or from countries in which the United States exercises extraterritorial jurisdiction, any opium or cocaine, or any salt, derivative, or

preparation of opium or cocaine, to any other country: *Provided,* That opium or cocaine, and salts, derivatives, or preparations thereof, except smoking opium or opium prepared for smoking, the exportation of which is hereby absolutely prohibited, may be exported to countries regulating their entry under such regulations as are prescribed by such country for the importation thereof into such country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

"The Secretary of State shall request all foreign Governments to communicate through the diplomatic channels copies of laws and regulations promulgated in their respective countries which prohibit or regulate the importation of the aforesaid drugs, and when received advise the Secretary of the Treasury and the Secretary of Commerce thereof; whereupon the Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce shall make and publish all proper regulations for carrying the provisions of this section into effect.

"SEC. 7. That any person who exports or causes to be exported any of the aforesaid drugs in violation of the preceding section shall be fined in any sum not exceeding $5,000 nor less than $50 or by imprisonment for any time not exceeding two years, or both. And one-half of any fine recovered from any person or persons convicted of an offense under any section of this Act may be paid to the person or persons giving information leading to such recovery, and one-half of any bail forfeited and collected in any proceedings brought under this Act may be paid to the person or persons giving the information which led to the institution of such proceedings, if so directed by the court exercising jurisdiction in the case: *Provided,* That no payment for giving information shall be made to any officer or employee of the United States.

"SEC. 8. That whenever opium or cocaine or any preparations or derivatives thereof shall be found upon any vessel arriving at any port of the United States which is not shown upon the vessel's manifest, as is provided by sections twenty-eight hundred and six and twenty-eight hundred and seven of the Revised Statutes, such vessel shall be liable for the penalty and forfeiture prescribed in section twenty-eight hundred and nine of the Revised Statutes."

Approved, January 17, 1914.

## APPENDIX B.

### Act Regulating Manufacture of Smoking Opium in United States.

[PUBLIC—No. 47—63D CONGRESS.]

[H. R. 1967.]

An Act Regulating the manufacture of smoking opium within the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That an internal-revenue tax of $300 per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes; and no person shall engage in such manufacture who is not a citizen of the United States and who has not given the bond required by the Commissioner of Internal Revenue. Every person who prepares opium suitable for smoking purposes from crude gum opium, or from any preparation thereof, or from the residue of smoked or partially smoked opium, commonly known as yen shee, or from any mixture of the above, or any of them, shall be regarded as a manufacturer of smoking opium within the meaning of this Act.

SEC. 2. That every manufacturer of such opium shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than $100,000; and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector or under instructions of the Commissioner of Internal Revenue.

SEC. 3. That all opium prepared for smoking manufac-

tured in the United States shall be duly stamped in such a permanent manner as to denote the payment of the internal-revenue tax thereon.

SEC. 4. That the provisions of existing laws covering the engraving, issue, sale, accountability, effacement, cancellation, and the destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by the preceding section.

SEC. 5. That a penalty of not less than $10,000 or imprisonment for not less than five years, or both, in the discretion of the court, shall be imposed for each and every violation of the preceding sections of this Act relating to opium by any person or persons; and all opium prepared for smoking wherever found within the United States without the stamps required by this Act shall be forfeited and destroyed.

SEC. 6. The provisions of the Act of October first, eighteen hundred and ninety (Twenty-sixth Statutes, page fifteen hundred and sixty-seven), in so far as they relate to the manufacture of smoking opium, are hereby repealed.

Approved, January 17, 1914.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

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## No. 525.

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THE UNITED STATES, PLAINTIFF IN ERROR,

*vs.*

JIN FUEY MOY.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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### Statement.

On November 23, 1915, a letter was received from Jin Fuey Moy, M. D., by the firm of McLanahan, Burton & Culbertson, of which the undersigned is a member, requesting the preparation of a brief and the presentation of an argument on behalf of the defendant in the Supreme Court of the United States in the above-entitled cause.

The letter stated that William Strite McDowell, whose appearance is entered in this case, had previously been discharged and fully paid for his services. Upon this statement

the case was accepted and the undersigned entered his appearance.

As the case was assigned for November 29, 1915, arrangements were made with the Government counsel for a brief extension of time and the motion to this effect was to be presented on that day. In the meantime it appears that Mr. McDowell telegraphed Government counsel that the extension was not necessary and that he was prepared to argue the case. Dr. Moy was informed of this conflict and he immediately came to Washington. On the following day he personally informed the clerk of this court and Mr. William Wallace, Jr., Assistant Attorney General, that he had discharged Mr. McDowell as attorney and that McLanahan, Burton & Culbertson were authorized to act for him. Mr. McDowell had prepared and filed a brief, which Dr. Moy stated was unauthorized by him. On November 30th a letter was addressed to Mr. McDowell, stating that Dr. Moy had informed McLanahan, Burton & Culbertson that he never retained Mr. McDowell in this appeal, and had notified him some time ago to discontinue his activities in the case. It was also stated that for the protection of Dr. Moy's interests and in order that there might not be any misunderstanding regarding the position of the undersigned, a statement of the facts would be filed with the court.

Attached to this statement is an affidavit of Dr. Jin Fuey Moy.

H. RALPH BURTON,
*Attorney for the Defendant.*

THE UNITED STATES, PLAINTIFF IN ERROR,

*vs.*

JIN FUEY MOY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

Jin Fuey Moy, being first duly sworn, deposes and says:

That he is the defendant in the case of the United States *vs.* Jin Fuey Moy, Number 525, in the Supreme Court of the United States; that in the same entitled case, when pending before the District Court of the United States for the Western District of Pennsylvania, he was represented by N. S. Williams and William S. McDowell, attorneys; that before the case was tried on, to wit, the 27th day of April, 1915, he verbally notified William S. McDowell that he did not wish to be represented by him any further and paid the said McDowell for his services in full; that, nevertheless, the said McDowell, contrary to his request and wishes, continued to represent him, and because of the serious situation presented deponent did not take such action as might have compelled the said McDowell to discontinue his activities. Deponent further states that on the 5th day of May, 1915, he again verbally informed the said McDowell that he did not wish to be represented in any way by him and on July 29, 1915, he wrote him a letter, a copy of which is hereto attached and made a part hereof, informing him that since he, the said McDowell, had remained in the case after their relation as attorney and client had terminated he did so upon his own volition and risk, and asking that he deliver any papers that he might have belonging to deponent to his attorney, Nathan S. Williams.

Deponent states that notwithstanding the various requests made to the said McDowell that he cease his activities, he

persistently represented himself as the authorized attorney of deponent; that his attorney in this case, now before the Supreme Court of the United States, is H. Ralph Burton, of McLanahan, Burton & Culbertson, attorneys-at-law, Washington, D. C.; that, as he is informed, the said H. Ralph Burton, acting with his authority, had arranged with Government counsel to ask for additional time and that the said McDowell, without his authority, telegraphed the said Government counsel that additional time was not necessary and that he would be ready to argue the case when reached; that such action on the part of the said McDowell was without authority of the deponent and, he believes, contrary to his best interests; that upon being informed of this he again called upon the said McDowell on the 29th day of November, 1915, and demanded to know why he continued to interfere with his affairs; that the said McDowell, disregarding his many requests, has had printed and filed briefs in this case which the deponent repudiates.

Deponent further states that when he retained the said H. Ralph Burton as his attorney he informed him of the controversy with the said William S. McDowell, and stated that the said McDowell was not authorized to represent him.

Deponent respectfully requests the court to regard the said H. Ralph Burton as his authorized attorney in this case.

(Signed) JIN FUEY MOY.

Subscribed and sworn to before me this thirtieth day of November, A. D. 1915.

[NOTARIAL SEAL.] BERENICE H. BROY,
*Notary Public, D. C.*

308 Grant Street, PITTSBURGH, PENN.,
July 29, 1915.

WILLIAM S. MCDOWELL, ESQ.,
711 *First National Building, Pittsburgh, Penn.*

DEAR SIR: Yours of the 14th instant received.

As your relation with me as attorney and client had terminated on April 27, 1915, and, since you remained in the case, you did so upon your volition or risk. For, I did not retain you from the beginning.

Any papers that you have of mine, or served by the United States Attorney, kindly turn it over to my attorney, Nathan S. Williams.

Respectfully,

JIN FUEY MOY, M. D.

Office Supreme Court, U. S.
FILED
DEC 6 1915
JAMES D. MAHER
CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1915.**

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## No. 525.

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THE UNITED STATES, PLAINTIFF IN ERROR,

*vs.*

JIN FUEY MOY.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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H. RALPH BURTON,
*Attorney for the Defendant.*